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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 38

IN THE MATTER OF ROBERT D. MICHAEL,
PETITIONER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 20, 1945.

CERTIORARI GRANTED MARCH 2, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

IN THE MATTER OF ROBERT D. MICHAEL, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 2, 1945.

[fol. a]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8734

In the Matter of Robert Michael, a Grand Jury Witness

Appeal from Judgment and Sentence of the District Court For the Middle District of Pennsylvania, No. 11205

Appendix to Brief for Appellant

[fol. 1a] In United States District Court, Middle District of Pennsylvania

Docket Entries

1944.

Sept. 14. Petition for Contempt (Title 28, Sec. 385 USC), Jet. Presented in open court and directed to be filed by oral order of Hon. William F. Smith.

Sept. 14. Order to show cause why said Robert Michael should not be adjudged in contempt of this court returnable Sep. 20, 1944 at Scranton, Pa. at 10:00 A. M. (S).

Sept. 14. By direction of Hon. William F. Smith copy of petition and order to show cause handed to Daniel H. Jenkins, Esq., counsel for defendant, by H. F. Kaufman, Deputy Clerk. JS 2.

Sept. 16. Order dated Sep. 14, 1944 to furnish copy of transcript of testimony of Robert Michael as witness before the Grand Jury, etc. (S)

Sept. 18. Petition of Robert Michael to grant a Rule upon M. H. Goldschein, Special Assistant to the Attorney General, to show cause why he should not furnish petitioner with a Bill of Particulars, and

Sept. 18. Order refusing petition and exception noted for petitioner. (S)

Sept. 20. Answer of Robert Michael by his attorney, Daniel H. Jenkins, to Petition filed Sept. 14, 1944, by M. H. Goldschein, Special Assistant to the Attorney General.

Sept. 20. Motion by Robert Michael, by his attorney, Daniel H. Jenkins, for a Rule to show cause why the Order

made Sept. 14, 1944, to show cause why Robert Michael should not be adjudged in contempt of court, be quashed, and

Sept. 20. Order denying the Motion and an exception noted for petitioner. (S)

Sept. 20. Two (2) witnesses called, sworn and examined. (See list)

Sept. 20. Government Exhibits G-1, G-2, G-3, G-4, G-5 a, b, c, d, e, f admitted.

Sept. 21. Nine (9) witnesses called, sworn and examined. (See list) Government Exhibits G-6 a, b, c, G-7, 7a, G8, G9, G9a, G11, admitted. Defendant's Exhibits D1, D2, D3 admitted.

Sept. 22. Motion of Robert Michael, by his attorneys, Stanley F. Coar and Daniel H. Jenkins, to revoke the Order to show cause granted on Sept. 14, 1944, and to dismiss the proceedings, and

[fol. 2a] Sept. 22. Order denying the Motion and exception noted for the petitioners. (S)

Sept. 22. Sentence: Adjudged guilty of contempt and committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of six (6) months (S) (See Cob. Page 387)

Sept. 22. Appeal and Notice of Appeal to the United States Circuit Court of Appeals for the 3rd Circuit from the Judgment.

Sept. 22. Certified copy of Appeal and Notice of Appeal, mailed to M. H. Goldschein, Special Asst. to the Atty. Gen'l., Scranton, Penna.

Sept. 22. Copy of Appeal and Notice of Appeal mailed to William P. Rowland, Clerk, U. S. Circuit Court of Appeals, 3rd Circuit Phila., Pa., with Clerk's Statement of Docket Entries.

Sept. 27. Letter to Hon. William F. Smith advising Notice of Appeal filed. JS 3

Oct. 2. Bond on Appeal in the sum of $3,000.00 with the New York Casualty Company as surety, and

Oct. 2. Order approving bond and directing it be filed. (Jones, Circuit Judge)

Oct. 3. Certified copy of Order of United States Circuit Court of Appeals, dated October 2, 1944, admitting Robert Michael to bail in the sum of $3,000.00 pending determination of Appeal; Appellant to have twenty days from

this date to file and serve his brief and that the United States of America, appellee, have fifteen days thereafter to file its brief; and that the above entitled cause be set for argument before this Court on Monday, November 6, 1944. (Jones, US Circuit Judge)

Oct. 3. U. S. Marshal's Return of Service, dated Oct. 2, 1944, (MF & E, $2.00)

[fol. 3a] In United States District Court for the Middle District of Pennsylvania, Sitting at Scranton, Pennsylvania.

In the matter of The Grand Jury Witness Robert Michael

No. 11205, March Term, 1944

Contempt

Title 28, Sec. 385 U. S. C.

Petition for Rule to Show Cause

To The Honorable William F. Smith, United States District Judge, in the District Court of the United States for the Middle District of Pennsylvania, at Scranton, Pennsylvania:

Now comes M. H. Goldschein, Special Assistant to the Attorney General, and by direction of the Grand Jury, respectfully presents to the court:

That on or about the 6th day of April in the year 1944 the Grand Jurors for the United States of America, duly impannelled and sworn in the District Court of the United States for the Middle District of Pennsylvania at Scranton at the March, 1944, Term of said court, undertook an inquiry into the activities of persons, companies, corporations, groups, and associations, whose names were to the Grand Jury unknown, relating to alleged frauds committed against the Government of the United States in the Middle District of Pennsylvania. In pursuance and in connection with such inquiry, the Grand Jury, during said March Term and succeeding terms, continued in existence by order of this court, acquired information that led to an investigation concerning a petition for reorganization filed by order

of the court on August 5, 1938, in the United States District [fol. 4a] Court for the Middle District of Pennsylvania by certain creditors of the Central Forging Company, a corporation located at Catawissa, Pennsylvania, in the Middle District of Pennsylvania and within the jurisdiction of this court. Said petition was filed under Section 77-B, Chapter 10 of the Bankruptcy Act, approved June 22, 1938. Said cause being entitled: In the Matter of Central Forging Company, Catawissa, Pennsylvania (a corporation); and filed by the Clerk of said Court as No. 9822.

That on the 27th day of December 1941, Robert Michael was appointed trustee of the Central Forging Company by Judge Albert W. Johnson of the aforesaid United States District Court, to take effect January 1, 1942, to fill the vacancy caused by the resignation of Walter H. Compton, Esquire, former trustee of the Central Forging Company, during whose trustee-ship the plant of said corporation was continued in operation.

That on January 19, 1942, the said Robert Michael, trustee, petitioned the court for authority to employ and appoint an attorney to represent him as trustee in the said proceeding, which petition was granted by order of the court dated January 24, 1942, and by virtue of said authority the said Robert Michael, trustee, did employ and appoint an attorney to represent him in attending to the legal matters pertaining to said trusteeship.

That the said Robert Michael, while acting as trustee, together with others, discussed and drew up a proposed plan of reorganization for the Central Forging Company, and amongst others discussed it with Harry S. Knight, Esquire, an attorney of Sunbury, Pennsylvania, who was [fol. 5a] interested in behalf of his client, the Maxi Manufacturing Company. That said proposed plan of reorganization, finally titled, "Proposal of a Revised Plan of Reorganization," among other things, contemplated the transfer of the assets of the Central Forging Company, the debtor corporation, to the Maxi Manufacturing Company allegedly by merger.

That during the month of February 1942, the said Robert Michael, trustee, and his attorney conferred with Hervey Smith, Esquire, in Bloomsburg, Pennsylvania, attorney for Dr. Daniel W. Beckley, and other bondholders and creditors of the Central Forging Company and advised him of the proposal for an alleged plan of reorganization which had

been prepared, and that if the said Hervey Smith would induce his clients not to object to said proposed plan but to agree thereto, then the said Hervey Smith would receive the sum of $500.00. This offer the said Hervey Smith declined to accept without the consent of his clients. That subsequent thereto upon instructions from his clients to accept said alleged proposed plan of reorganization, the said Hervey Smith did accept said original offer made to him by the said Robert Michael, trustee, and his attorney.

That from said plan of reorganization it became known the amount of money which would be available to the court for distribution for fees and expenses, and when said proposed plan of reorganization began to mature and negotiations with the bondholders committee were coming to a close, the said Robert Michael, trustee, made it known to [fol. 6a] Harry S. Knight and others that the amount of money made available to him and his attorney for fees was insufficient and inadequate.

That on the 8th day of April 1942, in the office of the said Harry S. Knight at Sunbury, Pennsylvania, it was proposed, offered, and agreed to by the said Robert Michael, trustee, to reduce the assets of the Central Forging Company by $3,000.00 in order that the Maxi Manufacturing Company, the contemplated purchaser under the proposed plan of reorganization, would pay to Robert Michael, trustee, and another, $3,000.00, which sum was to be in addition to the fee to be allowed them by the Court. The manner by which said scheme was to be effectuated was that the $3,000.00 should be paid by the Maxi Manufacturing Company to George L. Fenner, Sr., Esquire, ostensibly for legal services and the said George L. Fenner, Sr., was to convey said sum of $3,000.00 to Robert Michael, trustee, and his attorney.

On the morning of April 24, 1942, the said Robert Michael, while riding in an automobile from Wilkes-Barre to Sunbury, Pennsylvania, with George L. Fenner, Sr., discussed with him the manner by which the $3,000.00 was to be paid by the Maxi Manufacturing Company to said Robert Michael, trustee, and his attorney, as aforesaid. It was also agreed between them that George L. Fenner, Sr., was to report the said sum of $3,000.00 as income on his income tax return, and that he was to receive $500.00 with which to pay the income tax on the aforesaid $3,000.00. That [fol. 7a] upon their arrival at the offices of the said Harry

S. Knight, at Sunbury, Pennsylvania, various checks were drawn to cover the distribution of money provided for by the plan of reorganization, together with the fees and expenses allowed by the court. In addition thereto a check was made payable to the order of George L. Fenner drawn on the Catawissa National Bank dated April 24, 1942, in the sum of $3,000.00 on the account of the Maxi Manufacturing Company, which check was then and there endorsed by the payee thereof as previously agreed, and that said payee received from Robert Michael, trustee, and his attorney, $500.00 with which to pay the income tax on the aforesaid $3,000.00.

That the said Robert Michael, trustee, on the said 24th day of April 1942, after leaving the offices of Harry S. Knight, with others, went to the Catawissa National Bank, Catawissa, Pennsylvania, at which bank the aforesaid check in the amount of $3,000.00 payable to George L. Fenner was then and there cashed and the proceeds thereof, that is $3,000.00, was delivered to Robert Michael, trustee, and his attorney.

That on the 10th day of April, 1942, the said Robert Michael, trustee, appeared at the offices of the Central Forging Company at Catawissa, Pennsylvania, and stated to Homer N. Davis, an employee of said trustee, that he must have $2,000.00 in cash, asserting that he (Davis) [fol. 8a] could have no knowledge how matters in the bankruptcy courts are handled as he (Davis) never had had any experience along that line, but that it was necessary to "spread a little oil here and there in a case of this kind in order to get things done." He then directed Homer N. Davis to write several checks against the funds of Robert Michael, trustee in reorganization of the Central Forging Company, on the Catawissa National Bank: One made payable to Homer N. Davis in the sum of $600.00; one made payable to F. Max Long in the sum of $600.00; one made payable to cash in the sum of $300.00; another made payable to cash in the sum of $450.00; and still another made payable to cash in the sum of $250.00, totaling $2200.00, $100.00 of which was to be retained by Homer N. Davis with which to pay the income tax on the $600.00 check made payable to him and $100.00 to go to F. Max Long with which he was to pay the income tax on his check.

That the said Homer N. Davis made out said checks as directed and gave them to Robert Michael, trustee. That subsequent thereto the said Robert Michael, trustee, advised the said Homer N. Davis that he was sending the aforesaid checks to Catawissa by messenger, countersigned by the Special Master John W. Crolly and signed by himself as trustee. He further instructed Homer N. Davis, employee of said trustee, to have said checks properly endorsed and cashed at the Catawissa Bank and to give said money to the messenger. That the said Homer N. Davis, [fol. 9a] following the aforesaid instructions, cashed said checks, after being endorsed, at the Catawissa National Bank and gave to the messenger of Robert Michael, trustee, $2,000.00 in cash, retaining for himself $100.00 with which to pay the income tax on the $600.00 check made payable to himself and $100.00 to F. Max Long with which he was to pay his income tax on the check made payable to him.

On the 17th day of April, 1942, the District Court for the Middle District of Pennsylvania in the above styled matter allowed the said Robert Michael, trustee, and his attorney as fees and expenses the sum of $9,066.55; that on the 24th day of April, 1942, the said Robert Michael received, as per order of the court, the sum of $8,420.05 from the Maxi Manufacturing Company, the said company retaining the sum of $646.50 as the amount previously paid out by them for trustee expenses.

That the said Robert Michael, in answer to a subpoena, appeared before the aforesaid Grand Jury on the 3rd day of August, 1944, and after being duly sworn did testify on that day and days subsequent thereto.

That in answer to questions propounded to him before the aforesaid Grand Jury the said Robert Michael denied that he was present in the office of Harry S. Knight at Sunbury, Pennsylvania, on April 8, 1942, or at any other time, when a proposal was made that the trustee, Robert Michael, deduct from the assets (accounts receivable) of the Central Forging Company the sum of $3,000.00, which sum was to be paid over to said Robert Michael, trustee, [fol. 10a] and his attorney as compensation in addition to that which might be provided by the court.

The said Robert Michael further denied that he discussed with George L. Fenner, Sr., or was present when

there was a discussion that Fenner was to receive $3,000.00 from the Maxi Manufacturing Company as alleged fees for legal services which he was to pay over to Robert Michael, trustee and his attorney, which $3,000.00 the said George Fenner was to report as income on his income tax for which he was to receive $500.00 with which to pay said tax.

That the said Robert Michael further testified before said Grand Jury that the first time he heard of the aforesaid $3,000.00 transaction was when he was questioned with reference thereto before that body.

That the said Robert Michael further denied before the said Grand Jury that the matter of paying the aforesaid George L. Fenner $500.00 with which to pay his income tax was discussed on the morning of April 24, 1942, in the automobile riding from Wilkes-Barre to Sunbury, and also denied that the said $500.00 was given to the said George L. Fenner in his presence.

That the said Robert Michael further testified before the Grand Jury that he can not remember and has no recollection of being at the Catawissa National Bank at Catawissa, Pennsylvania, on April 24, 1942, following the conference at the office of Harry S. Knight at Sunbury, as aforesaid.

That said Robert Michael further denied before said Grand Jury that he instructed Homer N. Davis, an em- [fol. 11a] ployee of the trustee of the Central Forging Company, to write out the aforesaid checks in denominations of $600.00, $600.00, $450.00, $300.00, and $250.00, as heretofore set forth, all dated April 10, 1942, totalling $2200.00, signed by Robert Michael, trustee, which checks were cashed and $2,000.00 of said funds turned over to said Robert Michael. The said Robert Michael further denied that he had ever told Homer N. Davis that he must have additional money as it was necessary to "spread a little oil here and there in a case of this kind in order to get things done."

That the said Robert Michael further denied before said Grand Jury that during the month of February 1942, he discussed with Hervey Smith, or was present with his attorney when the said Hervey Smith was offered the sum of $500.00 to obtain consent of his clients to the trustee's proposed plan of reorganization for the aforesaid Central Forging Company.

That the said Robert Michael in answer to questions propounded to him has failed to disclose to this Grand Jury the total amount of money received by himself individually or jointly with his attorney in connection with the aforesaid petition for reorganization, nor has he disclosed how the fees and other monies received by him and his attorney were divided, that is to say, amongst whom and in what amounts.

That petitioner would further show to the court:

That the said Robert Michael, a witness before the aforesaid Grand Jury, has given obstractive, evasive, perjurous, and contumacious answers to questions propounded to him [fol. 12a] before this Grand Jury and has deliberately, wilfully, and contumaciously obstructed the investigation of this Grand Jury in matters hereinbefore set out.

That the said Robert Michael wilfully, deliberately, and contumaciously obstructed the processes of this court in uttering answers which were half truths, which impeded, delayed, and hampered the instant investigation, which sought to shut off and block the instant inquiry; in giving answers which were shifts and subterfuges instead of truths; in blocking the search for truth by answering with the first preposterous fancy which he chose to put forth; in contumaciously parring with the examiner and the Grand Jury; and in otherwise failing and refusing truthfully and fully to answer these proper questions put to him in the proceedings before the Grand Jury.

The testimony of the said Robert Michael will be made available to him subject to the approval and order of this court.

(Signed) M. H. Goldschein, M. H. Goldschein, Special Assistant to the Attorney General.

[fol. 13a] In United States District Court

[Title omitted]

Order to Show Cause

Upon the petition presented in open court by M. H. Goldschein, Special Assistant to the Attorney General, by the direction of the Grand Jury for the District Court of the United States in the Middle District of Pennsylvania on

the 14th day of September, 1944, alleging that Robert Michael, witness before said Grand Jury, has given obstructive, evasive, and perjurious and contumacious answers to questions propounded to him before that Grand Jury and has deliberately, wilfully, and contumaciously obstructed the investigation of said Grand Jury in the process of this court;

It is ordered that the said Robert Michael show cause before this court in Scranton, Pennsylvania, on the 20th day of September, 1944, at 10:00 A. M., why an order should not be made adjudging the said Robert Michael in contempt of this court.

It is further ordered that the service of a copy of this order, together with a copy of the petition in this matter, made upon Robert Michael on or before the 20th day of [fol. 14a] September, 1944, shall be due and sufficient service.

Dated this 14th day of September, 1944.

(S.) William F. Smith, United States District Judge.

[fol. 15a] In United States District Court

[Title omitted]

Petition for Bill of Particulars

To: The Honorable William F. Smith, United States District Judge, in the District Court of the United States for the Middle District of Pennsylvania, at Scranton, Pennsylvania.

The petition of Robert Michael respectfully represents:

One. On the 14th day of September, 1944, your Honorable Court granted a rule upon your petitioner to show cause why an Order should not be made adjudging your petitioner in contempt of this Court, and the underlying Petition averred that your petitioner "has given obstructive, evasive, perjurous, and contumacious answers to questions propounded to him before this Grand Jury and has deliberately, wilfully, and contumaciously obstructed the investigation of this Grand Jury in matters hereinbefore set out."

Two. In accordance with the oral Order of this Court, a transcript of the testimony taken before the Grand Jury was furnished to your petitioner, and he has thoroughly read all of the questions and answers therein contained and is firmly convinced and avers that he did not give any obstructive, evasive, perjurous, and contumacious answers, [fol. 16a] and did not obstruct in any manner the investigation on hand.

Three. Firmly believing that the transcript of the testimony fails to substantiate the averments contained in the underlying Petition, your petitioner respectfully prays your Honorable Court to grant a Rule upon M. H. Goldschein, Special Assistant to the Attorney General, to show cause why he should not furnish your petitioner with a Bill of Particulars.

And he will ever pray, etc.

(Signed) Robert Michael, Petitioner.

Duly sworn to by Robert Michael. Jurat omitted in printing.

[fol. 17a] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, SITTING AT SCRANTON, PENNSYLVANIA, MARCH TERM, 1944

No. 11205

In the Matter of the Grand Jury Witness ROBERT MICHAEL.

Contempt, Title 28 Sec. 385, U. S. C.

Order

Now, September —, 1944, upon presentation of the foregoing Petition and consideration of the same, and upon motion of D. H. Jenkins, Attorney pro petitioner, a Rule is granted upon M. H. Goldschein, Special Assistant to the Attorney General, to show cause why he shall not furnish Robert Michael with a Bill of Particulars in the above entitled proceedings.

Returnable the — day of —, 1944.

[fol. 18a] IN THE UNITED STATES DISTRICT COURT

ORDER ON PETITION FOR BILL OF PARTICULARS

Chambers of William F. Smith Judge.

Newark, 1 N. J.

September 18, 1944.

Daniel H. Jenkins, Esq.,
605 Mears Bldg.
Scranton, 3, Pa.

Re: Robert Michael—Grand Jury Witness, March Term, 1944

Dear Sir:

Your application for an order to show cause in the above entitled matter is denied. The petition upon which your application is predicated is patently defective in that it does not disclose in what respect the charges against your client are insufficient.

It is the opinion of the Court that your present application for a bill of particulars is filed solely for the purpose of delay, which in itself would obstruct the Grand Jury in its present inquiry. We have carefully examined the petition filed by Mr. Goldschein and have read and considered the testimony upon which it is based, and it is our opinion that this record sufficiently apprises your client of the charges he will be required to meet. The bill of particulars, under these circumstances, is unnecessary.

You will be prepared to proceed with the hearing on the date originally fixed, September 20, 1944.

Very truly yours, (Signed) William F. Smith, Judge,
United States District Court.

cc-M. H. Goldschein, Esq.

[fol. 19a] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO QUASH THE RULE

To: The Honorable William F. Smith, United States District Judge, in the District Court of the United States for the Middle District of Pennsylvania, at Scranton, Pennsylvania.

Now, this 20th day of September, 1944, Robert Michael, by his attorney, D. H. Jenkins, moves Court for a Rule to show cause why the Order made by your Honorable Court on the 14th day of September, 1944, to show cause why Robert Michael should not be adjudged in contempt of court be quashed for the following reasons:

One. The petition upon which the said Order of September 14, 1944, was made is not under oath.

Two. The Court has no authority to pass upon the conflicting testimony of witnesses.

Three. The alleged facts set forth in the petition do not support the conclusions that the witness gave obstructive, evasive, perjurious and contumacious answers to questions propounded to him and that he deliberately, wilfully and contumaciously obstructed the investigation of the Grand Jury.

[fol. 20a] Four. The denial by Robert Michael of the testimony alleged to have been given by other witnesses before the Grand Jury was not obstructive, evasive, perjurious or contumacious, nor has it deliberately, wilfully and contumaciously obstructed the investigation of the Grand Jury.

Wherefore, your petitioner respectfully prays your Honorable Court to quash the Rule heretofore granted on September 14, 1944.

And he will ever pray.

(Signed) D. H. Jenkins, Stanley E. Coar, Attorneys pro Petitioner.

[fol. 21a] *Duly sworn to by Robert Michael. Jurat omitted in printing.*

[fol. 22a] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, SITTING AT SCRANTON, PENNSYLVANIA, MARCH TERM, 1944

No. 11205

In the Matter of The Grand Jury Witness ROBERT MICHAEL

Contempt, Title 28, Sec. 385, U. S. C.

Order

Now, this 20th day of September, 1944, upon presentation of the within petition and consideration of the facts therein contained, and on motion of D. H. Jenkins, Attorney pro petitioner, the motion for a Rule to show cause why the presentment filed in the above-entitled case should not be quashed is allowed.

Returnable the — day of —, 1944.

ORDER DENYING MOTION TO QUASH

Now, September 20, 1944, after due consideration, the within motion is denied and an exception noted for petitioner.

(Signed) William F. Smith, U. S. District Judge.

[fol. 23a] IN UNITED STATES DISTRICT COURT

[Title omitted].

ANSWER

To: The Honorable William F. Smith, United States District Judge, in the District Court of the United States for the Middle District of Pennsylvania, at Scranton, Pennsylvania.

Robert Michael, by his attorney, D. H. Jenkins, makes the following answer to the Petition filed by M. H. Goldschein, Special Assistant to the Attorney General, on the 14th day of September, 1944, in the above entitled case.

It is admitted that Robert Michael was appointed Trustee of the Central Forging Company on the 27th day of December, 1941.

It is admitted that Robert Michael did, on the 24th day of January, 1942, employ and appoint an attorney to represent him in attending to the legal matters pertaining to said Trusteeship. The attorney so appointed was J. Donald Reifsnyder, Esq.

It is admitted that Robert Michael, while acting as Trustee, together with others discussed and drew up a proposed plan of reorganization for the Central Forging Company and, amongst others, did discuss it with Harry S. Knight, Esq., Sunbury, Pennsylvania.

[fol. 24a] It is admitted that during the month of February, 1942, Robert Michael, Trustee, and his attorney conferred with Hervey Smith, Esq., concerning the alleged plan of reorganization, but the said Robert Michael did not agree to pay the said Hervey Smith the sum of $500.00 if he would induce his clients not to object to the proposed plan.

It is denied that Robert Michael, Trustee, made it known to Harry S. Knight and others that the amount of money made available to him and his attorney for fees was insufficient and inadequate.

It is denied that on the 8th day of April, 1942, in the office of Harry S. Knight at Sunbury, Pennsylvania, it was proposed, offered and agreed to by Robert Michael, Trustee, to reduce the assets of the Central Forging Company by $3,000.00 in order that the Maxi Manufacturing Company, the contemplated purchaser under the proposed plan of reorganization, would pay to Robert Michael, Trustee, and another, $3,000.00, which sum was to be in addition to the fee to be allowed them by the Court.

It is denied that the sum of $3,000.00, the amount by which the assets of the Central Forging Company was to be reduced, was to be paid to George L. Fenner, Esq., to be conveyed to Robert Michael, Trustee, and his attorney.

It is denied that on the 24th day of April, 1942, Robert Michael, while riding in an automobile from Wilkes-Barre to Sunbury, Pennsylvania, with George L. Fenner, Sr., discussed with him the manner by which $3,000.00 was to be paid by the Maxi Manufacturing Company to Robert [fol. 25a] Michael, Trustee, and his attorney. It is denied that George L. Fenner, Sr., was to report the said sum of $3,000.00 as income on his income tax return and that he was to receive $500.00 with which to pay the income tax on the said $3,000.00. It is admitted, however, that the said Robert

Michael testified that various checks were drawn to cover the distribution of money provided for by the plan of reorganization together with the fees and expenses allowed by the Court in the offices of Harry S. Knight at Sunbury, Pennsylvania, but it is denied by Robert Michael that he knew that a check in the sum of $3,000.00 dated April 24, 1942, made payable to George L. Fenner drawn on the Catawissa National Bank was made out at that time, and he further denies that Robert Michael, Trustee, delivered to George L. Fenner, Sr., $500.00 with which to pay the income tax on the said $3,000.00, and he further denies that he knew whether or not his attorney, J. Donald Reifsnyder delivered $500.00 to the said George L. Fenner to pay the said income tax.

It is denied that on the 24th day of April, 1942, after leaving the office of Harry S. Knight Robert Michael, with others, went to the Catawissa National Bank, Catawissa, Pennsylvania, for the purpose of cashing a check of $3,000.00 made payable to George L. Fenner, and that the proceeds thereof were delivered to Robert Michael, Trustee, and his attorney.

It is denied that Robert Michael, Trustee, on the 10th day of April, 1942, appeared at the office of the Central Forging Company, Catawissa, Pennsylvania, and stated to Homer N. Davis, an employee of said Trustee, that he must have $2,000.00 in cash for the reason that it was [fol. 26a] necessary to "spread a little oil here and there in a case of this kind in order to get things done." It is denied that Robert Michael directed Homer N. Davis to write several checks against the funds of Robert Michael, Trustee in reorganization of the Central Forging Company, on the Catawissa National Bank, as set forth in the Petition.

It is denied that Robert Michael, Trustee, received the said checks in the said amounts from the said Homer N. Davis.

It is denied that subsequent thereto the said Robert Michael, Trustee, advised the said Homer N. Davis that he was sending the aforesaid checks to Catawissa by messenger, counter-signed by the Special Master John W. Crolly and signed by himself as Trustee.

It is further denied that he instructed Homer N. Davis to have the checks properly endorsed and cashed and the money given to the messenger. It is further denied that

Homer N. Davis gave to the messenger of Robert Michael, Trustee, $2,000.00 in cash.

It is admitted that on the 17th day of April, 1942, the District Court for the Middle District of Pennsylvania in the Central Forging bankruptcy allowed the said Robert Michael and his attorney fees and expenses in the sum of $9,066.55, and that on the 24th day of April, 1942, the said Robert Michael, Trustee, received as per Order of Court $8,420.05 from the Maxi Manufacturing Company.

It is admitted that Robert Michael, in answer to a subpoena, appeared before the Grand Jury on the 3rd day of [fol. 27a] August, 1944, and did testify on that day and days subsequent thereto.

It is admitted that Robert Michael, in answer to questions propounded to him before the Grand Jury, denied that he was present in the offices of Harry S. Knight at Sunbury on April 8, 1942, or at any other time when a proposal was made to deduct from the assets of the Central Forging Company the sum of $3,000.00, to be paid over to Robert Michael, Trustee, and his attorney as compensation in addition to that which might be provided by the Court.

It is admitted that Robert Michael, Trustee, denied that he discussed with George L. Fenner, Sr., or was present when there was a discussion, that Fenner was to receive $3,000.00 from the Maxi Manufacturing Company as alleged fees for legal services which he was to pay over to Robert Michael, Trustee, and his attorney.

It is admitted that Robert Michael testified before the Grand Jury that the first time he heard of the $3,000.00 transaction with George L. Fenner was when he was questioned with reference thereto before that body.

It is admitted that Robert Michael denied before the Grand Jury that the matter of paying the aforesaid Fenner $500.00 with which to pay his income tax was discussed on the morning of April 24, 1942, in the automobile riding from Wilkes-Barre to Sunbury, and also denied that $500.00 was given to George L. Fenner in his presence.

It is denied that Robert Michael testified before the [fol. 28a] Grand Jury that he cannot remember and has no recollection of being at the Catawissa National Bank at Catawissa, Pennsylvania, on April 24, 1942, following

the conference at the office of Harry S. Knight at Sunbury as aforesaid. On the contrary, it is averred that the said Robert Michael testified as follows on Page 59 of the testimony of Robert Michael taken before the Grand Jury:

> "Q. Now, did you go to the bank, the Catawissa National Bank with Mr. Davis, Mr. Reifsnyder, Mr. Fenner and Mr. Long? A. When?
>
> "Q. On the 24th after you left Mr. Knight's office and had lunch? A. I can't remember whether we did or not. We went to the bank after that meeting sometime, whether it was that day or not, for the purpose of turning over papers, to give papers to Mr. Unangst, but whether it was that day or not, I can't recall that.
>
> "Q. And you also went over there to pay him $225? A. I think we paid him at that time."

It is admitted by Robert Michael that he denied before the Grand Jury that he instructed Homer N. Davis, an employee of the Trustee of the Central Forging Company to write out checks in the denominations of $600.00, $600.00, $450.00, $300.00, and $250.00, all dated April 10, 1942, totalling $2,200.00, $2,000.00 of which was turned over to Robert Michael. It is admitted that Robert Michael denied that he had ever told Homer N. Davis that he must have additional money to "spread a little oil here and there [fol. 29a] in a case of this kind in order to get things done."

It is admitted that Robert Michael denied before the Grand Jury that during the month of February, 1942, he discussed with Hervey Smith, or was present with his attorney when the said Hervey Smith was offered $500.00 to obtain consent of his clients to the Trustee's proposed plan of reorganization for the Central Forging Company.

Robert Michael denies that he has failed to disclose to the Grand Jury the total amount of money received by him in connection with the aforesaid petition for reorganization, and he avers that he has disclosed all of the fees which were received at any and all times by him. Robert Michael has told the Grand Jury the amount of monies he has received, but he cannot answer for any monies received by J. Donald Reifsnyder, his attorney, nor can he say how or whether or not his attorney divided his money, either amongst whom or in what amounts.

Robert Michael makes further answer to the petition filed by M. H. Goldschein, Special Assistant to the Attorney General, and says that he has not given obstructive, evasive, perjurious and contumacious answers to questions propounded to him before the Grand Jury. The said Robert Michael denies that he has wilfully, deliberately and contumaciously obstructed the processes of this Court; he further denies that he has uttered answers which were half-truths or which impeded, delayed or hampered the investigation, which sought to shut off and block the instant inquiry; he further denies that he gave answers which [fol. 30a] were shifts or subterfuges instead of truths; he further denies that he has blocked the search for truth by answering with the first preposterous fancy which he chose to put forth; he further denies that he contumaciously parried with the examiner and the Grand Jury, and also denies that he failed and refused to answer questions propounded to him truthfully and fully. Robert Michael further avers that he is unable to answer the corresponding paragraph of the petition for the reason that there are no specific statements made that will enable the said Robert Michael to answer, but that the said paragraph contains statements which not only lack particularity but are conclusions.

Wherefore, Robert Michael respectfully prays your Honorable Court to dismiss the petition and discharge the Order to show cause why Robert Michael should not be held in contempt of Court.

Respectfully submitted, (signed) Stanley F. Coar,
D. H. Jenkins, Attorneys pro Robert Michael.

[fol. 31a] *Duly sworn to by Robert Michael. Jurat omitted in printing.*

[fol. 32a] TESTIMONY OF ROBERT D. MICHAEL, WITNESS BEFORE THE GRAND JURY FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

August 3, 1944

By the Secretary: Please raise your right hand and be sworn. (Witness is sworn by Secretary.)

By the Foreman: Do you swear to that oath as read?

A. I do.

By Mr. Goldschein:

Q. What is your full name, sir?

A. Robert D. Michael.

Q. What is your business?

A. I am a manufacturer of wood products.

Q. What is the name of your business?

A. Abington Wood Products Company, Clarks Summit.

Q. What is your home address?

A. 520 Highland Avenue, Clarks Summit.

Q. Did you act as trustee for the Court in the Middle District of Pennsylvania in any of its equity receivership or bankruptcy cases?

A. Yes, I did.

Q. In which case did you act as trustee?

A. Of the Eddington Distilling Company, located at Schaefferstown. That is the address, the post office address.

Q. Did you bring with you any files or records of the Eddington Distilling Company in receivership?

A. No, I have the files of the Eddington Distilling Company, they are over in Mr. Daniel Jenkins' office, who represented me as attorney in that case, and they are quite large and the investigators looked them over. I didn't know what part you wanted of them, and another thing, I had very short notice. I didn't know that I was coming here until late this morning, and my notice read 11 A.M.

Q. All right, sir. What other cases did you act as trustee [fol. 33a] or receiver in?

A. In the reorganization of the Central Forging Company of Catawissa.

Q. Did you bring with you any records of the Central Forging Company?

A. No, you have all those. You removed them from the office of my attorney some time ago.

Q. When you say "you," you mean who?

A. Well, the FBI.

Q. You never did see me before, did you?

A. No, not to my knowledge, no.

Q. You mean some of the FBI Agents were up to see you?

A. Yes.

Q. And you turned over certain records to them?

A. No, I did not. They were turned over by my attorney who represented me.

Q. Mr. Jenkins?

A. No, Mr. Reifsnyder.

Q. Have you any other records other than Mr. Reifsnyder has

A. I have a few incidental papers and so forth, that were at my home in this file, which I brought with me. I brought all records that I had.

Q. Will you let us see what you have here, sir?

A. They are of minor importance. Some of them are no good at all, other than——

Q. Are they all on Central Forging Company?

A. No, they are both.

Q. All right, sir. Will you, instead of identifying them separately, you leave them in that file and we will mark the file as Exhibit 1.

A. O.K.

Q. Now, you say you identify this as your file, do you?

A. That is my own personal file. Ordinarily there is some papers in it that if I knew they were there, I would have probably put them in the files, in either one of the attorney's office, but they were—they just happened to be there.

Q. You understand that you do not have to answer any questions that may incriminate you, nor do you have to turn over any papers that may tend to incriminate you [fol. 34a] of any Federal violation. Do you understand that?

A. Yes, and those papers have been examined out here this morning by Agents.

Q. This file will be marked Exhibit #1, of the testimony of Mr. Michael, dated today. (Exhibit so marked.)

Q. You have no other papers connected with either the Eddington Distilling Company or the Central Forging Company?

A. I have not.

Q. Did you ever act as trustee or receiver in any other matters?

A. No.

Q. Where are the papers—are the papers in Mr. Jenkins' office available for examination?

A. Yes, your Agents have investigated them. That is, they have examined them. I was there a month or two

ago and one of them was there and he made an examination.

Q. Are there any other books or papers in the possession of anyone else; either in the Central Forging Company or the Eddington Distilling Company matter?

A. No. All the records of the Central Forging Company or the Eddington Distilling Company are in Mr. Jenkins' office, with the exception of such incidental papers as are here. The records of the Central Forging Company are in the possession of the FBI.

Q. There are no—nobody else has any records belonging to those les that you know of?

A. No, sir.

Q. All right, sir. Mr. Michael, we don't want you to discuss either the Central Forging Company or the Eddinging Distilling Company matter with anyone until you reappear before the grand jury here, some time probably next week. We will notify you when to appear. Right now we will recess you until that time.

[fol. 35a] August 24, 1944

By Mr. Goldschein:

Q. Mr. Michael, will you begin with your appointment as successor trustee of the Central Forging Company, how your appointment came about, and what you did in connection with the Central Forging Company, right up to date? Will you begin at the beginning.

A. Well, of course I had served previous to this as trustee, of which I am still serving, the case has never been closed, of the Eddington Distilling Company, and previous to the first of January, 1942, Judge Johnson sent for me to come into his office, which I did, and he told me about the condition which was existing down at the Central Forging Company in Catawissa, and he also told me that at that time that Mr. Compton, who was then trustee, had received an appointment or an elective office, I don't know which it was, at Harrisburg, and that he was leaving as of the first of January, and it would be necessary to appoint a successor trustee. He asked me if I could accept that appointment, and at the time he told me he said there was a situation there that they are now engaged in making vital war contracts, principally sub-contracts from the Berwick-American Car and Foundry Company, and that

he was very desirous that the plant would be kept operating. I told him that I could, providing it would not run over three months, because—I don't know whether I have explained that before, that at that time I was in a position where I was really working only from the first of April until the first of January, and that I had a full three months off. Then I could reorganize the company within that length of time, I would do it, providing I had an opportunity to go down there, study the thing over, which I did. And I therefore came back and told him I thought I could do some good down there, and I accepted the appointment.

Q. Just to explain, right in there, what was your business up until that time?

A. Just previous to that?

Q. That's right.

[fol. 36a] A. I have had several businesses. Manager of the Scranton Country Club.

Q. How long were you manager of the Scranton Country Club?

A. Seven years.

Q. Prior to that what was your business?

A. I was manager and President of the Hotel Jermyn Company. I was—I also had a garage property here in town that I operated, and I also——

Q. How long were you with the Hotel Jermyn?

A. About five and a half or six years.

Q. How long were you in the garage business?

A. About fifteen years.

Q. In the garage business fifteen years prior to that?

A. No, some of these—well, some of them coincide.

Q. Dove-tail?

A. Yes, I had the Hotel Wyoming Company in town, which I organized and was President of. I was also President of the Hotel Jermyn Drug Company, but they all dove-tailed in. As a matter of fact, I was still President of the Hotel Jermyn Company while I was—the first year or part of the first year I was at the Scranton Country Club in 1935. I operated both places.

Q. When Mr. Sordoni took it over?

A. No, Mr. Sordoni did not come until quite some time after that. When he left they had formed a new company called the Scranton Hotel, of which William McLaughlin

was the prime organizer, and my belief is he put up money, or such monies as were put up. I have no interest in it.

Q. It was refinanced after you left?

A. Yes.

Q. All right. Now, since 1935——?

A. In the Spring of 1935 I went to the Scranton Country Club.

Q. And you were with the Scranton Country Club until 1943?

A. No, I left there in 1942.

Q. When?

A. A. In the Fall of 1942.

Q. Now, in January, 1942, Judge Johnson called you to his office?

A. That is right.

Q. And discussed with you the condition of the Central [fol. 37a] Forging Company?

A. Yes.

Q. Had you discussed it prior to your discussion with Judge Johnson?

A. No.

Q. You did not?

A. No.

Q. Did you know Donald Johnson?

A. Yes, I have known Mr. Donald Johnson for several years.

Q. How long prior to that had you known Donald Johnson?

A. Of course you are asking me now, in effect, when I first met Donald Johnson. I could not off-hand say that. It was probably along in the middle part of the second half of the time from 1935 to 1940. It is rather hazy in my mind as to just when I first met him.

Q. When did you become well acquainted with him?

A. I would say around — that is a progressive thing too. From the first time I met him, he used to be a member of the club, and I got to know him a little better, we played golf occasionally together. He traveled with a group of the fellows that I traveled with, that is we were friendly socially, our wives would get together.

Q. He would come to your apartment, and you would go to his?

A. Yes, occasionally.

Q. When did that begin, about how long was it prior to this appointment that you knew Donald Johnson well?

A. As I say, it was a progressive thing. I would say offhand that I first met Donald Johnson around 1935 or 1936. I can't remember when we first entered his house or when he first entered mine, but it would be two or three years maybe after that. He is by no means my closest friend.

Q. You have some that are closer?

A. That is right. If he comes to town, or was in my town — I don't live in Seranton — if he was not in too big a hurry I would expect him to drop in the same as I would drop in if I was in his town.

[fol. 38a] Q. When was the last time you talked to him?

A. I saw him yesterday.

Q. Where?

A. In the Hotel Jermyn.

Q. Where?

A. Well, in the Omar Room.

Q. What time was that?

A. Around noon, we had a sandwich together.

Q. What was your topic of conversation?

A. Just general things. I did not know he was going to be in town. I just happened to run into him there.

Q. What was the general topic of your conversation?

A. Well, I was inquiring about his wife and his children, and consequently he inquired about my family.

Q. What he was doing in town?

A. Well, I said "What brings you to town?" and he said he had to come up in a case.

Q. Did he tell you what case?

A. No, but he didn't need to, I assumed this was it. Now I know, after reading the newspapers.

Q. Did you discuss the case with him any?

A. No, I did not.

Q. Ask you any questions with reference to anything that transpired in the Central Forging?

A. No, the nearest we came to discussing the case, I inquired about his father, and that brought up nothing that would be of importance.

Q. What did it bring up?

A. Nothing. He said his father was out at Eagles Mere and he expected to go from here back out there.

Q. So the Central Forging Company or your participation in it didn't come up at all?

A. No, that is correct.

Q. While we are on the subject, have you discussed any matter connected with the Central Forging Company since you were before this grand jury?

A. No.

Q. Anybody?

A. Perhaps my wife.

Q. Anybody other than your wife?

A. No.

Q. You are sure about that?

[fol. 39a] A. Yes, I am rather positive about that. Not anything directly or so. I might have said I had to go to court today or something.

Q. Discuss it with Donald Reifsnyder?

A. No.

Q. Donald Reifsnyder didn't ask you anything about the Central Forging Company out on the golf course?

A. No, not to my knowledge.

Q. You are positive about that?

A. I am rather.

Q. Of course if he said anything to you about it, or asked you any question, you could not forget that, it was too recent?

A. That is right.

Q. When was the last time you saw Donald Reifsnyder on the golf course?

A. I have not seen Donald Reifsnyder on the golf course. I remember him in the country club the other day, I think last Saturday.

Q. Let's modify that. Instead of golf course — the country club. That is one and the same thing.

A. The building is the club house, and the golf course is outside where you play.

Q. You don't consider the house as part of the golf club at all?

A. No, I would not. They are entirely separate.

Q. Incorporated separately too?

A. No, but they have different functions. One is where you play, and the other is where you come in. There are social activities in the club building. If you said the golf course, I would assume you meant outside on the playing part.

Q. We both understand each other now. Last Saturday you say you saw Donald Reifsnyder at the golf club?

A. That is right.

Q. The Scranton Golf Club?

A. Yes.

Q. What time of the day was it?

A. I think it was after we had played, so therefore it would be somewhere around four or five or six o'clock.

Q. You spoke to him, of course?

A. Yes, I did. I had no reason not to.

Q. Did he ask you anything about the Central Forging Company.

A. I don't remember that he did. We spoke of things [fol. 40a] generally. I asked him when he was going back. He said he did not know. He was here for certain reasons.

Q. He told you why he was here, of course?

A. Yes, I think so.

Q. Why did he tell you he was here?

A. What is that?

Q. Why did he tell you he was here?

A. He told — I don't know just how he expressed it. But I gathered that he was here on the Central Forging Company.

Q. When did you discuss that with him?

A. At that time.

Q. Didn't ask you about any figures connected with the Central Forging Company? —

A. No. The only time — the most recent time I have gone into anything on the Central Forging Company was the day I received a summons. If I look at it I will refresh my memory as to the date. I received this paper about one or two hours at the most on August 1st before I was to appear here, and I understood he was at home so I drove down. He being my lawyer in the case, I drove to his home and stopped there and told him that I had been summoned to appear before this grand jury, and if there would be anything I should know in connection with the case as my lawyer in the case I thought that was the thing to do. And he said "No, I haven't anything to tell you." I was there at the house about five minutes and came on down here.

Q. Did he tell you he had been subpoenaed and had been before the grand jury?

A. He told me he had been subpoenaed, but he did not tell me when.

Q. Let's go back to your conversation with Judge Johnson about your appointment. You say that up until that

time you had not discussed the Central Forging Company with anyone and had no knowledge of the fact that you were going to be appointed?

A. That is correct.

Q. Prior to that time you were appointed as trustee of the Eddington Distilling Company by Judge Johnson?

A. That is correct.

Q. Did you have any knowledge before you were appointed as trustee that you were to be appointed trustee of that?

[fol. 41a] A. I had talked it over with Judge Johnson, yes.

Q. Prior to the appointment?

A. Yes.

Q. With Donald Johnson?

A. No.

Q. How long from the time Judge Johnson talked with you until the time he appointed you. I am talking about the Eddington Distilling case now.

A. Yes, a matter of a few weeks. Sometime between October 26, if I remember right, and January 1st. I use the date October 26th because that is the time, I think, that a petition in bankruptcy was filed here and the petitioner, a Mr. Auerbach, who was the petitioner, was put in charge. The debtor in possession, in other words. After that, he was removed and I was substituted.

Q. Now, from the time that the Judge first talked to you about it until the time you were appointed, you say a period of weeks elapsed?

A. Well, it would be some time between October, the latter part of October, and the first of January. I think my appointment was the first of January. I am not sure.

Q. During that time you did not tell or discuss with Donald Johnson the fact that his father had sent for you with reference to appointing you as trustee in the Eddington Distilling Company.

A. That I could not say. I might have mentioned the fact that I had a talk with his father and he asked me about taking an appointment. I don't know. I could not be sure. I don't remember it, though. I might have.

Q. With reference to your appointment as trustee of the Central Forging Company, did you discuss that with Donald?

A. No. I have said that five times — no. I did not discuss——

Q. You don't mind saying it a sixth, do you?

A. No. No, I guess not. If you don't mind the repetition.

Q. Don't mind the repetition at all, sir. How long was it from the time Judge Johnson first talked that appointment over with you until the time that he appointed you?

A. You are speaking now of Central Forging?

Q. Yes.

A. I would not be sure of that either, a matter of [fol. 42a] two or three weeks, or somewhere along about a month.

Q. That was — you were appointed in January?

A. I think as of the first of January.

Q. 1942?

A. That is right.

Q. During that time did you see Donald Johnson prior to your appointment? From the time the judge first discussed it with you until the time you were appointed did you see Donald Johnson at the time?

A. Yes, I apparently did. I saw him rather constantly. He lived in town at that time.

Q. I believe you have already stated six times that although you did see him you did not mention the fact that his father called you in to discuss the appointment as trustee of the Central Forging Company.

A. You did not ask me that. You asked me did I ever discuss the Central Forging with Donald Johnson, and my answer is no. I might have mentioned that I talked to his father or that after I was appointed I said I have been appointed. That I cannot remember to any definite degree, and I can't answer the question.

Q. We are talking now about the interim from the time his father discussed the Central Forging Company with you to the time you were appointed.

A. That is right.

Q. You said you saw Donald Johnson on several occasions?

A. I said I might have seen him. I don't know whether he was even in town. He could have been in Kalamazoo at that time and I would not have missed him. But if he was around, the chances are that I would have run into him. The same as many of my friends. I can't go back

three years and say I saw Sonny Edwards, or anyone in particular on a certain day. I don't remember. It certainly was not of any significance, any meeting I had with Donald Johnson prior to that appointment as trustee of the Central Forging Company. For me to say I did not see him — I don't know. Maybe you have somebody that will say "I saw them talking together at Wyoming and Spruce St." I can't say that. I don't remember. If I did meet him, it had no significance, at least no significance that made any impression on my mind that I could remember now.

[fol. 43a] Q. After you were appointed did you discuss the matter with Donald Reifsnyder?

A. Yes, I asked him to be my attorney.

Q. And did you discuss that with Donald Johnson?

A. No.

Q. Did you discuss it with the judge?

A. Yes.

Q. And the judge told you he would be glad to appoint Mr. Donald Reifsnyder?

A. He told me that if I wanted Donald Reifsnyder as my attorney, that he thought he would be acceptable to him, and when his petition for appointment was presented to the judge, he approve of it, so therefore he must have approved of Mr. Reifsnyder.

Q. Did you discuss Mr. Reifsnyder's appointment with Donald Johnson?

A. No, I did not.

Q. After Mr. Reifsnyder was appointed, what was the first thing you did in connection with the Central Forging Company?

A. Of course I had already been down to the Central Forging Company before Mr. Reifsnyder was appointed as my attorney. And I can't remember as of the date of his appointment, whether it was a day or two afterwards, but I had gone down there, I had talked and inspected the property and discussed it at some length with the people who were in charge, made myself as familiar as I could with the type of people who were operating it, went over certain of the accounts that I needed to familiarize myself with, and at that time I thought that I could reorganize or do something with it, and therefore I came back and went to see Don Reifsnyder. Of course I had already asked Donald before that, before my appointment a few days, if he would consider serving as my attorney, and he said that

he thought so, but he would like to talk it over with his partners in the law firm, and when I came back I went to see him and he said he would.

Q. Did he tell you why he was talking to the partners of his law firm about it?

A. No, I don't know. I don't think he used the word "partners." I think he, as a matter of fact, stated that Mr. Stark who I believe was the senior head of it —.

[fol. 44a] Q. Did he tell you why he was going to talk to Mr. Stark?

A. No. I think maybe that is the policy of the firm for the younger members to discuss it with the senior members when they take cases.

Q. Did you ever employ Mr. Reifsnyder in anything else?

A. No.

Q. Did you ever consult with him before in any other legal matter?

A. No, nothing of any significance. I might have asked him some point of law or something we were involved in at the club. I don't know, I might, I can't remember. My answer to that is no.

Q. Did he ever do any collecting for the club?

A. No, not to my recollection.

Q. Did you ever pay him a fee?

A. No.

Q. So this is the first and only legal matter you ever had with Mr. Reifsnyder?

A. That is correct.

Q. Now, after your inspection and your employment of Mr. Reifsnyder, you went about getting up a plan of reorganization, did you not?

A. That is correct.

Q. And you discussed that plan with whom?

A. We discussed it between ourselves and with all the people who would be interested in it.

Q. For example, Mr. Knight, Harry Knight of Sunbury?

A. Yes. We went to his —.

Q. Mr. F. Max Long?

A. That is right.

Q. Connected with the Maxi Manufacturing Company?

A. Right.

Q. Mr. Homer David?

A. Right.

Q. Mr. Long, Sr.?

A. Fred Long, yes. We also talked it over with the committee and their counsel.

Q. Mr. Wickersham?

A. Mr. Wickersham of Harrisburg, and his committee. We talked it over with Dr. Beckley, who represented, more or less, his mother, the widow of the founder, if you will [fol. 45a] call it that, or promoter of the thing back twenty years before.

Q. And Mr. Hervey Smith?

A. That is right. Who is the attorney for Dr. Beckley.

Q. Now, do you recall the date that you met in Mr. Harry Knight's office to disburse the money put up by the Maxi Manufacturing Company in compliance with the reorganization plan?

A. No, I could not recall the date. I could approximate it. And that is one of the reasons that I have mentioned several times to you the last time, and to several of the FBI investigators that you have removed from my attorney's office and denied to me all of the files of the Central Forging Company, and after — .

Q. Who has denied to you what?

A. They kept them.

Q. Have you requested any particular item that was denied you?

A. No, I have not made an official request, but — .

Q. Have you made an unofficial request?

A. I talked with you the other day about my files. I said I would like to refresh my recollection on them.

Q. Did I tell you you could not have them?

A. No.

Q. What do you want with them?

A. I don't want any particular thing. But when the investigators came to me — the only reason I am saying this at this particular time is because you are asking me about certain dates. I don't want to appear that I am trying to be a reluctant witness. I will tell it, but I am saying I can't remember what I can't remember. If I had the figures — and when I went to the attorneys office and requested from the girl that I would like to take the file — after all it will be three years in January, — so that I can familiarize myself with some of the details. Now, I haven't got them, but when I say I can't remember what day it was, I can't remember, but in there, in that file I would find that.

Q. We will see if we can't show you sufficient records from your file to refresh your recollection, and I will tell [fol. 46a] you now that you may look at anything that you want to see that pertains to you, that is in your attorney's file, and insofar as you are concerned, we have nothing but your papers that you brought in today.

A. And a few little papers the other day, of no great value.

Q. Will you, without referring specifically to the date that you were in Mr. Knight's office, at which time you each got your checks, Mr. Knight's, check written out for Mr. Unangst, two checks written out for you, one as trustee and one individually, and Mr. Long was there and Mr. Davis was there, and Mr. Fenner was there. Do you remember that?

A. I would imagine they were, yes.

Q. The first occasion?

A. That is right. I think they were all present.

Q. Now, will you tell the grand jury the purpose of that meeting?

A. It was to consummate the entire — the bringing together of the Maxi Manufacturing Company and the Central Forging Company. We had worked out a plan of reorganization, or of merger, whatever you want to call it, where the Maxi Manufacturing Company was to take over all of the assets of the Central Forging Company.

Q. Now on that particular day did Mr. Long and Mr. Davis write out some checks, two which you got, one which Mr. Knight got, one which was made out to Mr. Unangst for $225?

A. Do I remember of those?

Q. Do you remember that on that day those checks were disbursed?

A. I think that is right, yes. We had a meeting at Mr. Knights, at which time all these papers were signed back and forth. Of course, perhaps it is not quite as clear in my mind as it would be in an attorney's mind. You want to remember that I was surrounded there by a flock of lawyers, and I am not a lawyer, but we had worked out the general plan of the thing, and depended more or less for the mechanics of the settlement up to my lawyer and other lawyers. Mr. Knight was representing the Longs, and of

[fol. 47a] course he was a rather prominent attorney. We relied a great deal upon him.

Q. You went from Mr. Knight's office out to lunch. Do you remember that?

A. I presume we did. We were there quite a while. There was a lot of detail.

Q. Do you remember where you went after lunch?

A. I imagine we went back to Mr. Knight's office.

Q. After you left Mr. Knight's office where did you go?

A. You mean at night? I imagine I came home.

Q. There was a check to Mr. Unangst, wasn't there, for $225?

A. Wasn't there a check for some $17,000 for Mr. Unangst too?

Q. Was there?

A. I don't remember. I can tell you the mechanics of the thing, but I can't tell you——

Q. Just tell what you had to do with it.

A. I received a check to be disbursed as trustee, which I brought to Scranton and deposited in the bank.

Q. Don't let's go too fast. Let's get out of Sunbury before we get to Scranton.

A. I thought we were out of Sunbury. I had several checks.

Q. Let's see if I can't call off a list and see if you can recall them. One check made out to Robert D. Michael as trustee in the sum of $8,548.33?

A. That check covered Donald Reifsnyder's——

Q. A trustee's check?

A. Yes, a trustees, and for attorney and their expenses.

Q. Did you receiver another check to Robert D. Michael in the sum of $8420.05?

A. I received another check and that sounds like the amount.

Q. And one of these was to be disbursed to the creditors, and the other to keep as your attorney fee?

A. I don't think I said any of that money was for creditors. That was all for other fees, if I am not mistaken. For other fees due other people who were interested, such as John Crolly, I think I had to give Walter Compton a check out of that, I think the expenses of the old Columbia [fol. 48a] County receivership. That cause or originally in a state receivership—the State was appointed—it seems to me there was some $2,000 worth of fees and ex-

penses that I disbursed there to somebody in Bloomsburg.

Q. Smith's father?

A. No, it was not Smith's father.

Q. Wasn't it?

A. Smith's father is dead.

Q. His estate?

A. He had a milk business there. I don't know just what that was significant.

Q. Let's just separate those two checks. One was written out to Robert D. Michael, trustee, in the sum of $8,548.33, and another written out to Robert D. Michael, for $8,420.05. The check of $8,420.05 went to you and Reifsnyder?

A. That is correct.

Q. The one as trustee you disbursed?

A. That's right.

Q. In addition to that there was a check of $5789.45 that was written out to Harry Knight?

A. That was his fee apparently.

Q. Then there was another check of $2000 written out to Harry Knight, wasn't there?

A. Not to my knowledge.

Q. Wasn't the Maxi Manufacturing Company supposed to pay an additional $2,000 to Harry Knight, supplementing his fee?

A. I don't remember that.

Q. Do you remember that Harry Knight asked for a fee of $7500?

A. Yes.

Q. And he cut it down *of* $5500 so that there would be enough money from what the Maxi Company was to pay for your fee and Reifsnyder's fee and the rest of the money you were to disburse?

A. Correct.

Q. And that the Maxi Company was to make up that additional $2,000?

A. That I don't know anything about the affairs of the Maxi Company or how they relate to Harry Knight other than the money they paid into this at the time that company was merged. $2,000 that they paid to Harry Knight, never heard of it before.

[fol. 49a] Q. All these checks were written in your presence, weren't they, by Homer Davis and Max Long?

A. There was a big room and there was a big group of people. I remember Homer Davis writing checks, but

whether he wrote $2,000 to Harry Knight, I could not tell you that. Maybe he brought it down in his pocket. If you say there was $2,000, I am taking your word for it. I don't know anything about it.

Q. If you don't know, just say you don't know.

A. I know nothing about $2,000. Why should it interest me—it was not my money.

Q. I don't know the why, Mr. Michael. All I am asking you is whether or not you know of any check being written.

Q. No.

Q. This group there—you were in the office, Mr. Knight's library?

A. And his other office there.

Q. That was about how big? 10'x 14'?

A. I don't know. I did not say a great big room. I said a large room, and he has a very fine library over there. Part of the time the lawyers were drawing papers and changing some technicalities about the deed. I was not paying too much attention to those things, because I didn't know about them. I am not a lawyer.

Q. Do you recall a check of $3,000 written out to George L. Fenner?

A. No.

Q. Did you hear of a check of $3,000 being discussed for Mr. Fenner?

A. No. What—in connection with this?

Q. Yes.

A. No, I don't know anything about that.

Q. Do you know of a check of $3,000 that the Maxi Manufacturing Company wrote out to Fenner that was to go to you and Michael to supplement your fee?

A. No, I don't know any such thing as that.

Q. You didn't hear anything about that?

A. No.

Q. Never discussed it with anybody?

A. No.

[fol. 50a] Q. With Mr. Fenner?

A. Never.

Q. Did you hear of a check of $225 for Mr. Unangst being written out?

A. No, but that could have been because he was appointed—he was asked to serve as one—you are a lawyer—you know—he was a depository for the bonds, and he was to receive something for that. What that was to be,

I don't know. I remember we agreed on it—it wasn't much of a sum. It might have been $200 or $500.

Q. After you went through all this discussion in Mr. Knight's office, after you left his office, before you went back to Scranton, did you go to the bank?

A. I don't remember. What bank are you talking about?

Q. The Catawissa bank.

A. I don't recall ever going up to the bank. I don't think we did. Or did we?

Q. Do you remember one of them going around the back way. The bank was closed and he came around, Mr. Unangst opened the front door and you all came into the bank?

A. No, I don't remember that.

Q. You remember talking to Mr. Unangst?

A. Yes, he was there, either that day or subsequently, because we had talked and arranged about some papers for the bonds.

Q. Then you don't recall going to his office that day to give him that check?

A. No, I don't remember how Mr. Unangst ever got his check.

Q. Were you with Mr. Reifsnyder that day after you left Mr. Knight's office?

A. Yes, we always traveled together.

Q. Came up in one car, didn't you?

A. Yes, we would have.

Q. I want to show you a receipt from Mr. Unangst for $225 dated April 24, 1942, and ask you if you did not receive that receipt from Mr. Unangst?

A. Apparently. Isn't that a part of a petition of mine? I probably have seen it. I don't remember getting that receipt personally, or having him sign it in front of me. Possibly my attorney gave it to him and got the receipt. Somebody else could have given him the money and got the receipt.

[fol. 51a] Q. You did not?

A. I don't remember. I don't ever remember getting a receipt from him.

Q. But you knew that you had paid him $225, as trustee?

A. I knew we had paid some something of a fee. How much it is, I don't know. Now, after seeing that, I know we paid him $225 for acting as depository agent for the bonds.

Q. That is at the Catawissa bank?

A. I imagine it is, yes, the Catawissa Bank. There are two banks, we had business with the upper one. That is where the Central Forging account was. I think it was the Catawissa National Bank.

Q. Do you recall when you gave him that $225?

A. No, I don't know whether Mr. Unangst was down—we could have been in Mr. Knight's office for all I know. We might have given it to him there.

Q. This would fix the date, at any rate, as April 24, 1942, as the date that Unangst got the check?

A. Well, I would imagine so. That is the date the receipt is made out. Of course you could have dated it one day and given it to him the next.

Q. When—of course Harry Knight got his check that day in your presence?

A. That is right, and the date on Knight's check should tell the date of the meeting.

Q. And all the receipts were written out in Harry Knight's office, weren't they?

A. Yes, quite likely.

Q. And here is Knight's receipt, isn't it?

A. Yes.

Q. Filed by you as trustee?

A. Right.

Q. Dated April 24th?

A. Dated April 20th.

Q. (Reading from receipt:) "Now this 24th day of April——"

A. Yes, I looked quickly down here at the bottom. All right.

Q. All right. Dated April 24, 1942?

A. Yes, correct.

Q. So that you can fix the date now as——

A. I am assuming that is the date.

[fol. 52a] Q. Assuming what?

A. That that is the date we met there, completing the transaction on April 24th. I assume that is the date.

Q. You don't know—you are just assuming?

A. Well, I would say that was the day. For all practical purposes.

Q. Let's make it more definite than that.

A. All right. I don't——

Q. Don't what?

A. I don't see what point there is to it.

Q. I want you to fix a date. Is that the date of your receipt?

A. Yes.

Q. That you received a check for the money you received as fees for Reifsnyder and yourself?

A. That is right.

Q. Now, you remember being—does that refresh your recollection as to the date you were at the Bank?

A. No, I still can't ever remember being at the bank.

Q. All right, sir. Now, do you remember where you went after you left Knight's office?

A. I am of the recollection that we drove home.

Q. Did you go to the Central Forging Company office?

A. No, I don't believe so.

Q. Do you remember their employees having a party there?

A. Well, the Central Forging employees?

Q. Yes.

A. No.

Q. Maxi Manufacturing Company?

A. Yes, but I don't think that was the same night. It was far previous to that.

Q. Was it? Do you remember going by to see Hervey Smith on your way home?

A. That same day?

Q. Yes.

A. No, I don't remember.

Q. Did you go to Bloomsburg?

A. Yes.

Q. And go to Hervey Smith's office?

A. Are you speaking of the night of the 24th? Is that right?

Q. Yes, the night of the 24th.

A. No, I don't remember ever stopping at Hervey Smith's office at night.

[fol. 53a] Q. Or evening.

A. Or evening.

Q. And they told you that Mr. Smith was out on the golf course and you went there to see him.

A. Yes, we did, but I don't think it was the same trip.

Q. Some time after that?

A. Yes.

Q. You are sure?

A. I am positive.

Q. It wasn't the day you were at Harry Knight's office?

A. I don't know. I am positive it was not.

Q. You are positive it was not. Now, how long after that do you say it was that you were at Hervey Smith's office and you saw him at the golf course?

A. I don't know. I would say it was several days after that.

Q. Now, that was the first time you were at Mr. Smith's office, was it?

A. No, we had been there before. I think I was there once before that.

Q. Did you talk to Mr. Smith?

A. A little. I did.

Q. Where you there along?

A. With Mr. Reifsnyder.

Q. Did you ever talk with Dr. Beckley?

A. Yes.

Q. You wanted Dr. Beckley to agree with your plan of reorganization, didn't you?

A. That is right.

Q. You first, however, discussed it with Hervey Smith?

A. That is right.

Q. And you told Mr. Hervey Smith that if his clients would agree to your plan of reorganization, he would get a fee of $500?

A. That is not correct.

Q. All right, sir. Now, will you tell us what was said with reference to Hervey Smith's fee?

A. I don't ever remember discussing a fee with Hervey Smith other than the fact that we were trying to get the Beckley interest to accept some kind of a compromise offer on their indebtedness on their claim, and the amount that we felt we could set up for them, as I recall, I think Hervey Smith made a remark that he would not get much of a fee [fol. 54a] out of that, and I had nothing more to do with that as to what he was going to get. I think we eventually paid the Beckleys some $1500.

Q. How much did you pay Smith?

A. Hervey Smith?

Q. Yes.

A. I think he got $500.

Q. Who gave him the $500?

A. Donald Reifsnyder.

Q. Where were you when he gave it to him?

A. In the car.

Q. Where?

A. At the Bloomsburg Golf Club.

Q. Did you give him a check for it?

A. No, I gave Donald Reifsnyder $500 in bills.

Q. Why in bills?

A. Well, I don't remember exactly, but we were driving down there and I remember him mentioning the fact that he said he would like to pay Hervey. He said I don't know whether I have a check, or something like that, and I remember saying "I still owe you some money, and I have $500 with me, if you want to take that and go ahead." So I produced the $500 and gave it to him.

Q. Did you drive there for the purpose of giving him the $500?

A. That is just about right. Donald had something to talk over with him in addition. I can't remember whether we did that on the way down or on the way back, but it was some time in the afternoon because they were playing golf, and we drove to his office and the girl or someone there told us he was playing golf, and we went there to see him.

Q. You have got the date fixed that you were in Sunbury as April 24th?

A. That is right.

Q. How soon after that did you give Reifsnyder his check for his fees and expenses?

A. The day I wrote the check out. I imagine it was the next day.

Q. The next day?

A. I am not saying it was positively. I would say I don't remember.

Q. This is your check that you brought in this morning, isn't it?

A. Yes.

[fol. 55a] Q. What date is that?

A. The 25th, the day after the 24th.

Q. That check is for $3893.80 on the First National Bank of Scranton, and signed by you?

A. That is right.

Q. Payable to him, Donald Reifsnyder?

A. That is correct.

Q. This check will be marked Exhibit "A" testimony of Mr. Michael. (Exhibit so marked.) Will you tell this grand jury, Mr. Michael, how you arrived at the figure of $3893.80?

A. I didn't arrive at it. That was the amount Mr. Reifsnyder asked me to make out the check to him for.

Q. Had you figured what your fee would be?

A. My fee was $3950, exactly the same amount as Mr. Reifsnyders.

Q. Why did you give him $3893.80?

A. Because when I went into his office, as I recall it was the following day, and now I know it to be the following day, I said "How do you want this made out? How much do you want?" because there would have been and was a little difference on the expense amount. After all while our expense account was all there, too, so he said he wanted a check for a certain amount, and he named it to me, and I sat down there and made out the check to him. That is the check.

Q. In your final account here you stated that you paid Donald Reifsnyder, attorney for successor trustee, a fee of $3950.

A. That is correct.

Q. Right?

A. Yes.

Q. And you also said that you paid him $411 for expenses, that you paid out for expenses for yourself and attorney, $411?

A. If that is what it is, that is what the amount was.

Q. Is that right?

A. Yes. You have, you add that $58.15 on there too, I think.

Q. Just let's add that as a separate proposition. Robert Michael and attorney, telephone calls $58.00.

A. And 15¢. I think if you add that figure and two times $3950 and $58.15, you will get the amount of the check given to me by Maxi Company by virtue of the allowance of this court.

[fol. 56a] Q. But all you gave him was $3893.

A. At that time.

Q. At that time. And you subsequently——

A. Gave him $500 which he gave to Hervey Smith. I assume he gave it to him. I did not see the actual proceeding.

Q. Didn't you see the receipt he got?

A. No.

Q. You did not?

A. No.

Q. As far as were concerned, you did not need any receipt, did you?

A. I was sitting in the car and he walked out on the golf course and handed it to him like that.

Q. About how long after you gave him this check did you give him $500?

A. I would say the next week, during the next week. But that I could not be sure about. It seems to me it was the next week.

Q. Couldn't it have been before you gave him this check?

A. I don't think so.

Q. You are sure about that?

A. Well, I would say I was sure, but I am not going to positively.

Q. Didn't you give it to him on the day you got the check at Sunbury?

A. I don't think so.

Q. Didn't you have to cash your check in Sunbury in order to get the $500 to give him?

A. No. I did not have to cash my check. Cash what check?

Q. That check that you got from Mr. Long, $8,420.05.

A. No, I never cashed that check. I deposited it to my account in the First National Bank.

Q. Did you?

A. Yes.

Q. Did you carry that $500 with you?

A. Which $500?

Q. That you gave to Hervey Smith?

A. I didn't give Hervey Smith——

Q. That Hervey Smith got. You gave it to Mr. Reifsnyder and he gave it to Mr. Smith.

A. That's right. I never cashed a check at Sunbury.

Q. We got through with that and you said you didn't. [fol. 57a] Did you carry that $500 from Scranton up to Sunbury with you?

A. That is where you confuse me. You said "up" to Sunbury. It is "down" to Sunbury.

Q. Excuse me—"down."

A. Yes, I did have the $500 with me.

Q. You are in the habit of carrying $500 in cash with you all the time?

A. Yes, particularly in those days. Because I needed it in my business.

Q. But you knew when you were going to Sunbury that you might need this money?

A. No. If you are trying to get me to say——

Q. Just a minute now. I am not trying to get you to say anything. I just want you to answer the questions as I put them to you. You answer them as you know them to be.

Q. That's right.

Q. Now, can you fix the date any more definitely with reference to the $500 that you gave Mr. Reifsnyder to give Hervey Smith?

A. No, I can't. The only thing I can remember, it was a beautiful, sunny day and it was in the afternoon. I can remember the sun. It was a sunny day. If the 24th was sunny, and that was the only one, that is the day. I can't remember whether it was on our way down or on our way back.

Q. You don't know whether you went there specifically to pay him the $500 or——

A. Oh, yes, that is what we went to see him for, as I remember. That is what Donald had wanted to do. He owed Hervey the money and wanted to pay him.

Q. You went from Scranton——

A. We went on our way down or on our way back, on an entirely separate errand. We made no special trip, positively. That was merely stopping off.

Q. Was that $500 taken into consideration when you gave Mr. Michael that check for $3893?

A. I never gave Mr. Michael a check for that.

Mr. Reifsnyder?

A. Yes, Mr. Reifsnyder had.

Q. Who did you think I was talking about?

[fol. 58a] A. You snapped me up a minute ago for anticipating you. You said did I ever give Mr. Michael that check. If you want to be technical, that is the way it will be.

Q. I stopped you because I didn't want you to say I was telling you to say anything. Because I am not telling you to say anything.

A. All right. I was anticipating you, so that is all right. I gave Mr. Reifsnyder that check and subsequently I gave him $500 in cash.

Q. Was he supposed to receive $3893.80 plus $500.

A. No, at the time I gave him that check, that was Greek, that amount on it. I didn't know what it was for,

why he asked for that particular check. If you want me to suppose, I will be glad to give you what I thought at that time, tell you why I allowed that check.

Q. Do that.

A. He was a member of a firm, as I have already told you, Stark, Bissell and Reifsnyder. I didn't know under what kind of a firm plan they were working, and I thought when he said he would like a check today for this amount of money, we will get together later on the difference, I thought that was the amount he wanted to turn in to his firm. It was so close, I thought maybe he would deduct the expenses or something, and that is the way it was. I didn't know under what arrangements they were working as part of the firm of Stark, Bissell and Reifsnyder.

Q. When you gave him that $500 additional, did you have any conversation with him with reference to whether or not that cleared up the account between you?

A. He mentioned the fact that at that point he was overpaid. And afterwards, sometime afterwards, we did get together and decided to balance the thing. I think he paid me back less than $100, to balance the whole account.

Q. He paid you $100?

A. It was something like that. If you want to, I can figure it right out.

Q. Let's figure it out.

A. I can't remember, I would have to see—that is about what he paid me back.

Q. Let's try it that way.

A. I will have to have that.

(Recess.)

[fol. 59a] Q. Mr. Michael, did you get any figures from the first and final account of Robert Michael, Successor trustee record that you wanted to see?

A. No, they are not of much use to me because the general expense then of $411 is not broken down. There must be a supplemental breakdown on that some place because in that $411 I believe would be certain definite expenses and the way we split on the expense end of it was when we made a trip together we just divided it on the general travelling expenses, that is, each took half, but any definite expense like some cost of printing, or certain other fees that we have paid out of that $411 is not entirely—I believe not entirely travelling expenses, so what I would

have to do would be to take that off, but out of the check I received, eighty-four——

Q. You got the check for $8,420.05?

A. Yes.

Q. Now, perhaps this will refresh your recollection, Mr. Michael. Do you recall when you went to Mr. Reifsnyder's office, that you gave him his check, you called off certain expenses that you had gone to and he wrote them down?

A. No, as a matter of fact, the only conversation that took place in his office when I went there, was I said: "well, how much do you want?" and he said "I want a check for this amount today", and as I recall it I said "Well, that isn't right", and he said "No, I will straighten the rest up later with you." As I explained before, at that time my impression was he wanted that particular check to put through the firm's account, and that is the reason he wanted that particular amount, and the expense money or certain other costs, he had made deductions, and the fact that it wasn't any certain amount was explained away in my mind by believing that is what he wanted the certain amount of the check for, for firm records.

Q. And then the additional $500 that you gave him made up the difference, except for the hundred dollars that he gave you back?

[fol. 60a] A. Well, the hundred dollars—It isn't a round sum, whatever it was, somewheres less than a hundred dollars.

Q. He gave it to you in cash?

A. Yes, I think he did. He could have given me a check. If he did, you have probably checked his records. Is there a check there?

Q. I don't know.

A. I don't know either.

Q. You don't know whether you got a check or cash?

A. No, I don't.

Q. And he gave you that as a difference between what he should have gotten and what you gave him?

A. That is correct.

Q. Now, you say you had a breakdown of your expenses?

A. Well, there must have been. Of course, he prepared this. I think it is correct, though, because I have signed it and assume it is correct, but someplace there is a breakdown of $411, I believe, but if I have it all straight now, evidently we must have been allowed $520 expenses, unless

I have—if that check was for $8420 that would be $520. There must be some other items in that $8420 that is covered in that final accounting, and of course, we had quite a little printing. We had to print——

Q. Who paid for the printing?

A. It seems to me it was all in this $8420.

Q. Now, when you say you are not familiar with this first and final account of Robert Michael, successor trustee, that you filed in this court, you don't mean that you are not familiar with the figures?

A. No, I am not familiar with it. I mean that particular item of $411 I can't tell you off hand. We had numerous expenses there. There was mileage and hotel rooms and so forth.

Q. Didn't you have your expenses written down?

A. Yes.

Q. What did you do with it?

A. It must be in Donald Reifsnyder's file or the file of that company. There must be a record of it someplace.

Q. How did you come to give it to Donald Reifsnyder?

A. We more or less kept it together.

Q. What do you mean, kept it together?

[fol. 61a] A. When we made a trip, we left the office and he would mark down the trip and what time, and whenever I went alone I would mark down the time. I kept a running diary, not a diary exactly, but I kept a record of it.

Q. What do you mean you kept a running diary?

A. I don't imagine it would be of——

Q. I want you to preserve that and bring it before this grand jury when you come in tomorrow morning.

A. If I can find it, yes, sir.

Q. In that you kept a detail of your expenditures?

A. Yes, that was the purpose of it, so I could sit down and make out a bill for it sometime.

Q. And when you gave Donald Reifsnyder your expenses, he just wrote that down in computing the sum due him?

A. That is right.

Q. Is that right?

A. Yes.

Q. The sum due you and the balance due him? And of course he told you what his expenses were?

A. Oh, yes. That is, he told me that he had at the office, they kept a record of what phone calls went out of

there and such printing bills and so on, that they could make up an expense account.

Q. Well, now, let me show you a memoranda here in which the expenses are listed and see if you can tell whether or not it is the same. Beginning with the top here. You have got on this $3950 to Robert Michael, $3,950 to J. D. R.?

A. Yes.

Q. Do you know anything about those figures?

A. Yes, they are the sums allowed us by the court.

Q. That was added up and it makes $7,900?

A. That is right.

Q. Then, you have Evans Printing Company—I am holding this blotter here so we can get one thing at a time, not to cover up the next thing. Then you have Evans Printing Company $7.25. Do you remember him writing that down?

A. No.

[fol. 62a] Q. You don't remember him telling you $7.25 for printing?

A. No, I can't remember any specific item like that. I remember there was a printing bill we had.

Q. You are discussing all the printing done? What expense——

A. I assume the printing done would be there, and it would come clear to me. I know we gave Evans Printing Company some printing business.

Q. Do you remember there was another bill for $7.15 for printing?

A. No. Unquestionably there is though, but I don't remember any $7.15 items three years ago or what we paid for.

Q. Do you remember $36.50 on the Evans Printing Company?

A. No.

Q. Do you remember that you paid $50.90 for printing?

A. No, I don't remember what we paid for printing. I know there is an amount for printing.

Q. Do you remember that you had an item of $234.58 for expenses to yourselves?

A. Could be. Could be. I don't remember the exact amount though, but that would be somewheres in the neighborhood of $200 that I had incurred as travelling expenses.

Q. And do you remember that Reifsnyder had a sum equal to that $234.57?

A. That is probably the same right there that I was looking for. It could be $469.

Q. And fifteen cents?

A. $469.15. That is right.

Q. Now, do you remember that $411 item written there?

A. No, I couldn't tell you exactly how that comes in there.

Q. Expenses? Plus 58?

A. Yes.

Q. Do you remember the 58 supposed to be telephone calls?

A. That is right.

Q. Made a figure of $520.05?

A. That is right, and that is what I have here.

Q. Now, do you recall that when he deducted this $50.90 from this figure $8,420.05, the check that you received, he got a figure of $6,369.15? Do you remember that?

A. No.

[fol. 63a] Q. $8,369.15? Do you remember that?

A. I don't remember him making out these figures.

Q. Do you remember the computations, whether you remember this particular page or not?

A. Yes, that computation is correct, quite obviously correct.

Q. Then do you remember that after deducting that he got $7,900 in fees after deducting these expenses?

A. That is right.

Q. And from that he deducted the $500 to Hervey Smith making a $7400 net fee from the court order?

A. That is right.

Q. Is that right?

A. I am reading it the same as you are.

Q. Well, now, I am not talking of this piece of paper, I am asking you whether or not the facts are right.

A. Well, if you take $500 from $7900, the fact is you will get $7400.

Q. Of course. The question now is whether or not you discussed that figure with him.

A. No, I didn't.

Q. You did not?

A. No.

Q. Did you discuss with him the fact that you would take the income tax off this $7400?

A. No.

Q. You didn't discuss any income tax at all?

A. Not at all. Why would I discuss income tax?

Q. I don't know. I just want to know whether you did or not.

A. He pays.

Q. You say you didn't discuss the income tax on that?

A. Why would I. I have to pay mine and he has to pay his. We certainly wouldn't start figuring income tax on a fee where we were both getting a like amount.

Q. You wouldn't?

A. No.

Q. Now, Mr. Michael, did you ever tell Donald Reifsnyder that Donald Johnson needed some money?

A. I don't ever recall that at all, and I wouldn't know whether he needed it or not, so therefore I would say I never said any such a thing.

Q. You didn't say that?

A. No.

[fol. 64a] Q. Now, did you ask Donald Reifsnyder whether or not he thought he was obligated to Donald Johnson for his appointment?

A. What was that question again?

Q. Did you ever ask Donald Reifsnyder whether or not he thought that you were both obligated to Donald Johnson for your appointment?

A. No, I never discussed the question. Did I ever ask Donald Reifsnyder if I thought that he was——

Q. If he thought——

A. If he thought that he was obligated to Donald Johnson for his appointment? No, obviously not, and I don't think he was. I know he wasn't so far as I was concerned, no one ever suggested Donald Reifsnyder to me. I alone am responsible for asking Donald Reifsnyder to serve, and I was very happy at the time when Judge Johnson agreed to appoint him to represent me.

Q. And Donald Johnson never told you that Donald Reifsnyder would make you a good selection as attorney?

A. No. At least he never made any remark like that before he was appointed. It might be he might have said, "Well, you have got a good lawyer," afterwards, and I don't even recollect that, but he never insinuated to me or

had any dealings or never has as to who I would have for my lawyer. I am certain I never even discussed it with Donald Johnson, any phase of it.

Q. And of course, if he had, you wouldn't have followed his suggestion any way?

A. Well, are you anticipating something?

Q. I am asking you.

A. No, I wouldn't.

Q. Well, I just wanted to know for the record.

A. I don't think the question is at all fair.

Q. Isn't it?

A. No.

Q. Why?

A. That isn't a fair question to ask me any more than you would ask me what would I do if President Roosevelt would ask me to do something.

Q. You showed so much indigation when I asked you that question that I was wondering whether or not you would if he had asked you.

[fol. 65a] A. No, I would not. I don't think so.

Q. Now, did you ever discuss with Mr. Reifsnyder whether or not your fee that you were to receive from the moneys put up by the Maxi Company was adequate, whether or not you were entitled to more money than was allotted to you for fees?

A. Well, I presume we did, but I think we were both fairly well satisfied. You never saw any one yet that got paid and thought they were over paid, did you? The fellows always want a little more, but the fee allotted to me, I think you looked it over. I certainly wasn't over paid. I think I accomplished a great deal down there, and earned every penny I got. If I had been allowed a few hundred dollars more, I still would say the same thing.

Q. It figured about a thousand dollars a month?

A. Around that. A little more than that, of course.

Q. And it wasn't a full time job?

A. Well, pretty much. I wasn't working at anything else at the moment.

Q. But it wasn't a full time job? You weren't putting all your time on that.

A. I was putting all my thoughts on that work, and the Eddington Distillery Company, which I had worked on for a year and had gotten a thousand dollars out of.

Q. You had the Eddington Distillery at the time you had this one?

A. That is right.

Q. So you couldn't possibly put in all your time?

A. Not all of my time, but quite a lot. I was down there real often and after all, there is a certain amount of this kind of work—well, it isn't exactly toil you know. You have to plan, you have to do head work, all of which I think I did. Don't you think we accomplished quite a little down there?

Q. You wouldn't want my answer on record.

A. I wouldn't?

Q. Then I would leave it off? You would prefer I leave it off?

A. Well, if it is going to influence the jury in any way

Q. I don't think it would influence the jury. I will leave it off anyway. Wasn't your plan almost the same as that [fol. 66a] submitted by Compton?

A. There was quite a little difference but the fact of it is, why didn't they vote Compton's plan in?

Q. Well, now, can you tell us that?

A. Yes, Because conditions had changed a little bit and we were energetic enough to go around and point out to the various people that stood to benefit by merging the two companies. At the time that was particularly true of the bondholders committee where we had a lot of opposition.

Q. How much did the bondholders committee get as fees, do you remember?

A. I don't know. It seems to me Wickersham got 1600 and I think each one of the members of the bondholders committee got four or five hundred apiece.

Q. About eight?

A. Was it eight? You are asking me. It seems to me it was something like that. Or did Compton get 2,000 or Wickersham? You have it. It is a matter of record. You could read it off.

Q. Do you know whether or not any of the bondholders committee owned any bonds originally?

A. Oh, yes.

Q. Is that so?

A. Well, now, they did at one time.

Q. Did they?

A. Yes.

Q. Who?

A. Mr. Holmes. Well, you know I have forgotten the members of the bondholders committee. Mr. Price owned some bonds. Now, I think he had them hypothecated on his loan some place. And Mr. Holmes, I think Mr. Holmes had a few bonds.

Q. And Mr.——

A. Holmes is from Philadelphia.

Q. Mr. Middleton?

A. Mr. Holmes didn't own any then. Because Mr. Holmes is from Philadelphia.

Q. Mr. Middleton didn't either, did he?

A. I can't recollect at the present time.

Q. They were just some of the investment brokers that floated the loans? They were duly elected members of the bondholders protective committee and they represented the bondholders and wanted to do business with somebody else?

A. I can't criticize the bondholders.

[fol. 67a] Q. I didn't ask you to criticize the bondholders. They were duly elected members of the bondholders protective committee and I just asked you whether or not any of that committee individually owned bonds.

A. And I answered I don't know about Holmes. Didn't he represent a syndicate of bondholders around Philadelphia. Price did.

Q. Did what?

A. Own some. At least there was supposed to be bonds in his name. Middleton, I don't remember. Wickersham, of course, no.

Q. Did you ever have any conversation with Mr. Davis of the Maxi Manufacturing Company with reference to supplementing your fee?

A. No.

Q. You did not?

A. No.

Q. Did you ever have any conversation with Mr. Fred Long with reference to supplementing yours and Mr. Reifsnyder's fee?

A. No.

Q. Did you ever have any conversation with Mr. F. Max Long?

A. No.

Q. With reference to supplementing your fee?

A. No.

Q. Did you ever have any conversation with Mr. Fenner?

A. No.

Q. George L. Fenner, Sr., with reference to supplementing your fee?

A. No.

Q. Did you ever have any conversation with any other individual——

A. No.

Q. With reference to supplementing your fee as trustee?

A. No.

Q. Did you ever have any conversation with Mr. Reifsnyder with reference to additional compensation?

A. Never.

Q. For your services?

A. Never.

Q. Never did?

A. Never.

Q. Now, since we recessed, were you able to recollect or remember when it was that you gave Reifsnyder $500 to give to Hervey Smith?

A. Well, it was on our way to or from Sunbury.

[fol. 68a] Q. Were you able to remember whether it was before or after you gave him the check for his portion of the fee?

A. I am positive it was after. It must have been after, because it was supposed to supplement his fee.

Q. Is that right? Is that the reason you believe it is after?

A. Yes, I am positive it was.

Q. Then, how long after that was it he gave you the difference?

A. I don't know. It might have been a week, ten days, two weeks.

Q. We have got to recess your testimony until tomorrow morning, so will you please return in the morning and bring with you your diary containing your entries during the year 1942.

A. I have no diary. I told you I had a sort of a running items there that I had put down. I certainly would not classify it as a diary. It is just a jotting down of expenses.

Q. Mr. Michael, I didn't name it, you did.

A. I did, that is right. Whatever it was, I mis-spoke. It isn't a diary.

Q. Whatever it is that you have that you call a diary, I want you to bring it.

A. If I haven't already turned it over to Mr. Reifsnyder. Now, I am not sure, I will look in my papers up there and if I can locate it I will certainly bring it in because I would like to have you see it.

Q. All right, sir. I think we ought to caution you again with reference to discussing this matter with any one prior to your return here tomorrow morning at 10:00 o'clock.

A. Ten o'clock? All right. I will be here.

[fol. 69a] August 25, 1944

By Mr. Goldschein:

Q. Mr. Michael, this is merely to admonish you not to discuss any matter pertinent to this investigation with any one. If you want to see any of the papers that you brought here at your first meeting or your second attendance here, you are at liberty to see them.

A. I am familiar with any papers that I brought here.

Q. All right, sir. We will recess you until further notice. You will probably be notified next week when to appear here.

A. All of those papers I asked for the other day are the papers you took out of Mr. Reifsnyder's office?

Q. Yes, we didn't take anything out of your office, did we?

A. No, because my file was his file and he has all of the important papers that I could use to refresh my memory. That is the only thing.

Q. All I want to know from you is whether or not we took any papers from you?

A. Well, I think that would be a technical question.

Q. That——

A. Whether they were my papers or Mr. Reifsnyder's papers.

Q. If you want any particular letter from his file that he brought in here you ask for it and I will show you the letter.

A. Well, it wouldn't be of any use to me.

[fol. 70a] August 30, 1944

By Mr. Goldschein:

Q. Mr. Michael, you recall that when you came before this grand jury for the first time you were advised that you need not answer any question that would incriminate you for the violation of a federal offense, that if any such question is asked you, you may state that the answer to that question will incriminate you.

A. That is correct.

Q. Now, Mr. Michael, you became trustee of the Central Forging Company on about January 1, did you not?

A. Of 1942, yes.

Q. Of 1942? And you continued to act as trustee up until May of 1942?

A. Well, I am still—I have never been discharged.

Q. I mean actively?

A. Actively?

Q. Yes.

A. What date did you say again?

Q. May 1943.

A. That is approximately it, yes.

Q. Who handled the books of that company?

A. Well, of course there was employees of the company. The auditing was done by a firm in Wilkes-Barre. I can't recall it. If you would mention it, however, I would be able to tell.

Q. Dobson?

A. That is correct.

Q. And who was the auditor at the plant?

A. Davis. Homer Davis.

Q. What was Homer Davis' function there?

A. I would say he was comptroller, auditor, chief bookkeeper.

Q. Now, Mr. Michael, on April the 10th, you drew a check to H. N. Davis, that is April 10, 1942, in the sum of $600.00 on the Catawissa National Bank, signed by you, trustee in reorganization proceedings? What was the $600.00 for, sir?

A. I couldn't tell you off hand. I would have to check with Mr. Davis. I signed a great many checks down there. As a matter of fact, I probably signed some 150 checks a week, and I can't tell you what every check was for.

[fol. 71a] Q. H. N. Davis is an employee?

A. That is right. He was the comptroller and auditor there.

Q. What was Davis' salary there?

A. I don't know off hand.

Q. Wasn't it $200.00 a month?

A. It could be that. That could be correct.

Q. Wasn't that fixed by an order of the court?

A. That I do not know.

Q. That is your signature, isn't it?

A. Yes.

Q. You issued this check?

A. That is correct.

Q. And it was paid out of the funds of the Central Forging Company as indicated on the check?

A. I would imagine so, yes. It certainly was.

Q. And the check is endorsed by H. N. Davis?

A. Yes, sir.

Q. Is that right?

A. Yes; that certainly is right.

Q. Now, you know that that check wasn't for salaries, don't you. Because Davis didn't get any $600.00 a month?

A. That is correct.

Q. Now, did you have any other business dealings with Davis in which you paid Davis any money?

A. No, of course, at the time that you are referring to here now, for all practical purposes, they had already taken over the business.

Q. Had they?

A. For all practical purposes.

Q. You mean the court had accepted the plan of reorganization?

A. I am not quite sure about that. As to whether they had actually accepted it or not, but the plan had been accepted by all the parties involved in it, as far as that went, and at that time and even previous to this, whatever —Well, we had to take some point there to fix a value on the property.

Q. And in taking the $600.00 out of the assets of the Central Forging Company, would that help to fix the value of the property?

A. No, because we had already established that at a certain point where we took an inventory of goods in process and so on, and at that point, which is in—I can't quite

remember, just when it was, some time probably in March [fol. 72a] say as of the 15th of March, because in a business being transacted constantly—there is a constant change in the value of accounts receivable and accounts payable your inventories, your goods in process, and we took a point previous, as a point of argument, so that even though the company had of lost money, or made money after that point, it was immaterial as far as our plan was concerned. Technically, we may not have passed over the title to the property, but for all practical purposes there had been sums of money agreed upon which the Maxi Manufacturing Company was going to pass on for these various assets.

Q. Now, wasn't it on April 14th that you filed a report of the assets of the Central Forging Company?

A. With whom?

Q. The court, the only person you would file it with. The court.

A. That could be. I don't know about what day we actually filed it, but we had prepared it and you can't just go ahead and in one day set up the whole plan and say this is all the company is in one day, and this is accounts receivable and accounts payable. Every time you sent out an order, your accounts receivable would go up, and every time you got a check, your accounts receivable would go down.

Q. What has that got to do with the check of $600.00 to Mr. H. N. Davis.

A. It doesn't have anything to do with it, other than the fact that at that point, it doesn't matter too much, made too much difference to me what they did.

Q. Now, the question is, did you get this $600.00?

A. No. I did not get the $600.00.

Q. You didn't get that?

A. No.

Q. No part of it?

A. No.

Q. Did you discuss it with Mr. Davis?

A. No.

Q. Did you discuss it with Mr. Long?

A. No.

Q. Did you ask them what this check for $600.00 was for?

A. I don't remember of ever asking them, no.

Q. Mark this check payable to the order of H. N. Davis for $600.00 on April 10, 1942 as Exhibit A, Mr. Michael.

[fol 73a] (Marked G. J. Ex. A—Robert Michael, Aug. 30, 1944.)

Q. I will now show you a check, Mr. Michael, on the Catawissa National Bank, payable to the order of F. Max Long, dated April 10, 1942, in the sum of $600.00 signed by Robert Michael, Trustee in reorganization proceedings, Central Forging Company, and ask you whether or not you signed that check?

A. Yes, that is my signature and Mr. Crolly's.

Q. Mr. Crolly's is on the top?

A. That is right.

Q. Now, did Mr. Crolly sign that check before it was filled out or after?

A. I couldn't answer that on that particular check, but it was generally customary, and as far as I know, John Crolly never signed a check until it was made out, and I don't ever remember doing any different myself, so I would say, subject to any correction, that that check was made out when Mr. Crolly signed it.

A. As was the previous one?

A. The same is true of all the checks.

Q. Did you bring it to Mr. Crolly to be signed?

A. That I could not tell you. As I explained—I haven't explained before, but I have to the FBI investigators, how this whole thing was handled at great lengths, and sometimes the checks were mailed up directly to Mr. Crolly and he would sign them and then mail them to me. That was the common way. Sometimes, however, if I was down there, I would bring the checks up and take them in his office. Sometimes I would wait while he signed them and then sign them myself and take them back.

Q. This check to F. Max Long, Mr. Michael. Did you have any conversation with Mr. Long about this $600.00 check?

A. No.

Q. You knew Mr. Long was an employee of the Central Forging Company?

A. That is correct.

Q. You knew he had a fixed salary?

A. That is right.

Q. You knew that his salary was not $600.00 a month?

A. That is correct.

Q. You were familiar with the books and records of the Central Forging Company at that time?

A. Reasonably so up to a period, as I explained before, [fol. 74a] of the two or three weeks before that when it was definitely established that we had made what you might refer to as, well, I hesitate to say the word deal, but we had discussed the whole thing all the way through with all the bondholders and we had come to certain conclusions as to the value of the different items that went to make up this asset and when we arrived at that and they agreed to pay us for it on that basis—now any loss of the company after that would have been borne by the Maxi Company, and obviously any profits that were made after that would have been borne by the company, and—I will admit that I became less vigilant perhaps on certain checks that were drawn after that period I had passed because I couldn't see and I still don't to this day, where it would make any difference to the plan or to the interested parties, if they drew a check for $50,000 and cashed it. It would still be their money for all practical purposes.

Q. It all depends on the point of view.

A. Of course.

Q. Or should I say, the law involved?

A. On that you might be right, but the point of view from the moral standpoint, I can't see anything wrong with it. It may be there is a technicality of the law, that maybe we shouldn't have agreed upon a value until the day the deed and title and everything had been passed. There was no intent to defraud, and there was no dishonest action as far as I am concerned.

Q. Why did you say there was no intent to defraud?

A. Because you said and have inferred that that possibly was not in accordance with the legal law.

Q. I didn't say anything about that. I didn't say whether it was or wasn't, did I?

A. No, but you said it might not be.

Q. Well yes.

A. Yes, it might not be. I am not a lawyer.

Q. I am asking you now whether or not you know what this check for $600.00 was for.

A. No, I don't.

Q. Did you get the $600.00?

A. No, I did not.

Q. Did you get any part of it?

A. No, I did not.

Q. Did you discuss with Mr. Long or Mr. Davis where this $600 was to go to or whom it was to go to?

A. No.

[fol. 75a] Q. You have no knowledge of this $600.00 check at all other than your signature?

A. That is right. It could have been in a group of checks and I inadvertently signed it. I don't remember. I don't know at this particular time.

Q. And the check payable to F. Max Long is endorsed by him?

A. I am not familiar enough with Max Long's signature to know. I imagine that is his though.

(Marked G. J. Ex. B—Robert Michael, Aug. 30, 1944.)

Q. Mr. Michael, I show you a check dated April 10, 1942, on the Catawissa National Bank signed by you as trustee in the reorganization of the Central Forging Company in the sum of $250, No. A-676, payable to cash, and ask you whether or not you signed that check?

A. That looks like my signature.

Q. Who was that check for?

A. Well, that was probably to replenish petty cash. As you go back through the books, not completely through them, you will find a great many petty cash checks, because a company in the condition the Central Forging Company was in had no credit, and it was necessary for us to pay cash for a g— gr-at many things. As a matter of fact, the railroad insisted on getting all freight items in cash. And all coal. Only to mention a couple of them. Many of our supplies, the things that we used in the manufacturing came in on c.o.d. basis and of course, it was necessary, my being up here, the trustee not being in daily attendance there, to have an operation—or capital on hand, in order to continue to do business. And after all, you have to replenish that cash from time to time and cash checks would come through and I would verify them after I got back there. They would keep the slips, bills, or receipts, and I would check them over to make certain that we were not signing too many cash checks. In other words, that they were in balance.

Q. Isn't it a fact, Mr. Michael, that up until that time your petty cash amounted to approximately $100.00 a month?

A. No, I don't think that is true.

Q. You don't think that is true?

A. No.

[fol. 76a] Q. All right, you say that was for petty cash?

A. I think so. I would asume that that is what it was for.

Q. Now that check is endorsed by Homer W. Davis isn't it?

A. That is correct.

(Marked G. J. Ex. C—Robert Michael, Aug. 30, 1944.)

Q. Now, I hand you a check on the Catawissa National Bank No. A-677, paid to the order of cash in the sum of $100.00 signed by you as trustee in reorganization proceedings of the Central Forging Company and endorsed by Homer Davis, dated April 10, 1942, and ask you if you can tell us what that check was used for.

A. No, I can't, other than the fact it is noted right on here, Account No. 1-A.

Q. By looking at the cash book then you could tell what that check was for?

A. I am not positive. I didn't keep the cash Book. I relied entirely upon the audit of Dobson and Company who, I understood, was reputable concern and who had been handling the auditing before I got there and simply continued.

Q. You didn't rely on them to sign this check?

A. No, but I would have assumed that if there was anything wring with it, it would have appeared.

Q. Did Dobson & Company make an audit of your trusteeship?

A. Why, what do you mean? They made an audit of the business down there up until the time we had established a point to where we turned it over to them.

Q. And that was before this?

A. Yes.

Q. So they made no audit of your business did, they, at all? That is, the business that we are talking about now?

A. Well, as far as I know, they didn't unless they are continuing as an auditing firm for the Maxi Manufacturing Company. At the point you are referring to now, that was

a period after we had, to all practical purposes, turned the business over.

Q. You made a deal?

A. Well, if you want to use the word deal.

Q. The only one that could turn that business over to them was the court?

A. That is correct.

[fol. 77a] Q. And the court hadn't turned it over to them.

A. No, not signed the order or anything like that, but there had to be a time—If you go out to buy an automobile or any other thing, you arrange to make a deal on the trading of your automobile. You may do it right now, but you may not pay for it until next week.

Q. You mean that you knew that the Judge was going to agree to your deal before it was submitted to him?

A. No, I can't say that I did.

Q. Well, he couldn't have decided it until it was submitted to him?

A. Not exactly.

Q. What do you mean by not exactly?

A. We had talked it over.

Q. With the Judge?

A. We kept the Judge informed at different times. He knew as to the progress we were making there.

Q. You told the Judge that?

A. My attorney did.

Q. Told the Judge what?

A. I don't know what exactly, what he did tell him.

Q. Did you go with him?

A. No.

Q. Then you don't know what he told him?

A. I don't know.

Q. Then you don't know whether or not the Judge agreed before the matter was opened up to him in court?

A. I do not.

Q. Before a petition was filed?

A. I do not.

Q. You are just taking it for granted that any deal you made, the court would agree to?

A. No, we did not take it for granted, because we had been talking to the various people interested and the bondholders had voted that they would accept the proposition and all the other interested people had. Also Mr. Long had

agreed to put up certain moneys. There was no apparent reason why the plan shouldn't go through.

Q. So you can't tell us whether or not you got the money out of this check for $100.00, No. A-677?

A. Yes, I can tell you I didn't get it.

Q. Did you have any discussion with Mr. Davis about this hundred dollars?

A. No.

[fol. 78a] Q. And you don't know where any part of it went?

A. No, I do not.

(Marked G. J. Ex. D—Robert Michael, Aug. 30, 1944.)

Q. Now, I had you a check on the Catawissa National Bank No. A-678, dated April 10, 1942, paid to the order of cash in the sum of $300, signed by Robert Michael, trustee in reorganization proceedings, Central Forging Company, and ask you whether or not you signed that check?

A. Yes, that looks like my signature.

Q. Now, can you tell this grand jury what that check was for?

A. No, I have no idea at the present.

Q. Usually, do you look at bills to see whether or not there are any bills accompanying the check?

A. I always did.

Q. When one is for cash?

A. And as I have explained before, that after a certain period, say March 15th, that I didn't check into it too closely because any moneys that would be charged one way or the other would have been for the benefit or the debit of the Maxi Manufacturing Company. For all practical purposes, I felt that I was out of it, and I know very well that I was perhaps a little careless after that period went by.

Q. And you don't know what this $300 was used for?

A. No, I don't know exactly, but I imagine the books of the company would reveal what it was used for.

Q. When you say exactly, what do you mean?

A. I think it was used in the running of the business. I assume that it was.

Q. Now, I am asking you whether or not you know what it was for?

A. Positively no, I do not.

Q. I want to know whether or not you got this $300.00 or any part of it?

A. No, no part of it.

Q. You didn't get the $300.00 or any part of it?

A. That is correct.

Q. Did you have any discussion with Mr. Long and Mr. Davis with reference to this $300.00?

A. No, I did not.

Q. Mark this Exhibit E.

[fol. 79a] (Marked G. J. Ex. E—Robert Michael, Aug. 30, 1944.)

Q. Now, I hand you a check of the Catawissa National Bank No. A-679, dated April 10, 1942, payable to cash in the sum of $450 signed by Robert Michael trustee in reorganization proceedings, Central Forging Company, debtor, and ask you whether or not you signed that check?

A. Yes, I signed that one. I assume it is all right to look at these, isn't it?

Q. Certainly. You are looking at the date of cancellation on these checks?

A. Obviously.

Q. And all the checks except the hundred dollar check No. A-677, all checks shown to you other than that one were cancelled on 4-17-42?

A. I notice that, April 17th.

Q. On the same date?

A. That is right.

Q. Now, this check for $300 that you say you didn't get any part of and know nothing about, did you discuss that with Davis?

A. No.

Q. Did you discuss it with Mr. Long?

A. No.

Q. Max F. Long?

A. No.

Q. And that too is cancelled on the 17th of April, is that right?

A. I noticed that.

Q. Now, I show you a check on the Catawissa National Bank No. A-679, dated April 10, 1942, payable to cash in the sum of $450.00, signed by Robert Michael, trustee in reorganization proceedings, Central Forging Company, debtor, and ask you whether or not you signed that check?

A. Yes, that is my signature.

Q. Can you tell us, Mr. Michael, what that check was for?
A. No, it is the same as the others.
Q. That check too was cancelled on April 17, 1942?
A. That is right.
Q. And did you get the proceeds of that check?
A. No, I did not.
Q. Did you get any part of it?
A. I did not.
Q. Did you discuss where the proceedings were to go [fol 80a] from that check?
A. No, I did not.
Q. Did you discuss with Mr. Long or Mr. Davis anything at all about that check?
A. No, I did not.
Q. Let's identify that check first.

(Marked G. J. Ex. G.—Robert Michael, Aug. 30, 1944.)

Q. The check we are identifying as Exhibit G is No. A-679, is that right?
A. Yes. Yes.
Q. Did it excite your curo*is*-ty, Mr. Michael, signing so many checks payable to cash in one day?
A. I didn't sign all those checks in one day. I know that.
Q. Will you explain what you mean, sir?
A. I am sure that I never got a group of checks with all those cash checks in one day and signed them.
Q. Just what do you mean by that? All the checks were dated April 17, 1942 except that one for $100.00 No. A-677, is that right?
A. Yes, I didn't look at the date on every check. I would have a stack of 150 checks there, and would go ahead and sign them up. Lots of times, with 90 payroll checks, I would slip right through and not even look at the names on them, and I am sure Mr. Crolly did likewise.
Q. You can't give us any information on those checks at all?
A. No, other than to say that I signed them.
Q. Other than what?
A. That I signed the checks. That is without a question my signature.
Q. A week ago last Saturday, I believe you said you were at the club house?
A. That is right.

Q. And that you were playing golf? You had been playing golf?

A. Yes, I think it was a week ago last Saturday that I was up there. I was thinking for a moment if that is the right day. I am sure it is.

Q. Now, I believe you said you saw Mr. Reifsnyder there on that day?

A. That is correct.

Q. Now, was there any discussion had between you on that day with reference to these checks?

A. No, sir.

[fol. 81a] Q. You made no statement to him about checks made payable to cash?

A. Positively not.

Q. Nothing said at all about that?

A. As a matter of fact, there was nothing discussed about the Central Forging Company.

Q. Now, do you recall talking to Mr. Reifsnyder over the telephone from New York?

A. Yes, he called me up.

Q. What was that conversation?

A. Well, he said that the FBI men had been down to see him in reference to the Central Forging Company.

Q. What else?

A. That is practically all that was said.

Q. Did you say anything to him?

A. No, other than the fact that I said, "What did they want," and so on, and he told me they had asked him various questions and he said he had turned over the file to them.

Q. Did he tell you what he had said?

A. No, he did not. Our conversation was not over one minute, if it was that long. Very brief.

Q. Did he mention the memorandum that he had in that file?

A. Memorandum?

Q. Yes.

A. No.

Q. Distribution of funds?

A. No, he never said anything to me about any memorandum.

Q. Didn't say anything to you about it at all?

A. No.

By Mr. Goldschein: Mr. Michael, on previous occasions when you were before this grand jury you were advised of your constitutional rights?

A. That is right.

Q. And you understand what was said with reference to that? Now when you were here previously, we discussed a meeting that you had with Mr. Fenner, Mr. Max Long, Mr. Davis, Mr. Reifsnyder, Mr. Fenner, in Mr. Knight's office at which he was present?

A. That is right.

Q. That is April 24, 1942.

A. I think that is what we agreed was the date, and I imagine it was correct.

[fol. 82a] Q. We didn't agree. You examined the checks.

A. That is right.

Q. And you stated the date you received the check was on the 24th of April, 1942?

A. That is right.

Q. Now, did you on April 8, 1942, have a conference with Mr. Knight in Mr. Knight's office at which you discussed the reduction in the inventory in the sum of $3,000?

A. No, I don't recall any matter like that.

Q. You remember that you and Mr. Reifsnyder called on Mr. Knight and discussed the inventory of the Central Forging Company?

A. Well, we might have discussed the inventory. We have discussed that. We have discussed many things, but as to discussing the reduction of $3,000 on April 8th or any other date, I do not remember.

Q. I will hand you a carbon copy of a letter on which is typed the name of Stark, Bissell and Reifsnyder, attorneys and counselors at law, Scranton, Pa., April 9, 1942. In the left hand corner marked copy, addressed to Harry S. Knight, Esquire, Sunbury Trust and Safe Deposit Building, Sunbury, Pa., regarding the Central Forging Company, on which is the name Don Reifsnyder on the bottom and ask you to read that letter. That letter is designated as No. 29, from the files of Mr. Davis, and ask you whether or not you recall the subject of that letter. (Witness reads letter.)

A. Why, yes, that seems—I am not—My memory isn't too clear as to the various amounts, but this is in accord-

ance with the discussions we had along that line. As to the exact amounts, I could say.

Q. And this letter dated April 9th refers to a discussion had in Mr. Knight's office the previous day, April 8th, doesn't it?

A. I am sorry, I don't——

Q. In the first paragraph?

A. Yes, that is what it says.

Q. Does that fix in your mind the date of that conference between Mr. Knight, Reifsnyder and you at which the substance of this letter was discussed?

A. Yes, reasonably so. Of course, that is not my letter, and I assume that, if it makes any difference as to whether it was April 8th or 7th. It isn't clear to my why. But for [fol. 83a] the record, I would assume it was April 8th.

Q. I am not interested in a particular date. I am interested in an occasion and trying to fix the date of that occasion. We can't fix any specific meeting unless we set an approximate date of that meeting to distinguish it from one that you had in January and one you had in March, and one you might have had in May.

A. Of course, we had several meetings, in Mr. Knight's office, and there was so many I can't remember them and I can't remember what days they were, and I can't remember what we specifically discussed the various times we met there.

Q. Of course, you can't, and that is the reason I am asking you whether or not you recall the subject matter of this letter and whether or not you recall an occasion when you were in Mr. Knight's office discussing the subject matter of this and ask you whether or not from this letter you can fix the approximate date.

A. I believe it would be April 8th.

Q. Do you recall whether or not anybody else was there other than you, Mr. Knight, and Mr. Reifsnyder?

A. No, I couldn't.

Q. Do you remember whether or not Mr. Davis was there?

A. No, I do not. He probably was, could have been there, then he might not have been. I don't remember. He was there on a couple of occasions. Whether it was this particular meeting, I don't know.

Q. Now, this particular letter pertains to a reduction in the figure of $25,000 in the inventory, leaving the amount

to be turned over to the trustee for administration expense at $22,982.83? That is in the second from the last paragraph. I am trying to identify the letter.

A. That is right.

Q. Have you any correspondence in connection with the Central Forging Company?

A. No. All of the correspondence that was written is in the file of Mr. Reifsnyder and practically all of the correspondence—as a matter of fact, I might even say all, he wrote. Or nearly all.

Q. Now, will you make available to us all records, correspondence memoranda or any other information that you may have?

A. I have already done that.

[fol. 84a] Q. Either in your possession or in the possession of some one else?

A. That I have already done. I brought to you some time ago here, my first appearance or my second, an envelope which contained all of the papers that I could get together pertaining to that case.

Q. Now, will you make available to us any additional files or records or information that may be in the custody of some one else, Mr. Reifsnyder's office or your attorney's office or—Of course, Mr. Reifsnyder was the attorney for the trustee in that case.

A. That is right.

Q. Or anybody else's office?

A. I think you have already done that, I don't know where we could go to get anything further. You have gone through his office, and if you want me to go over and search his office, I will act as your agent and do that.

Q. I don't want you to search Mr. Reifsnyder's office, because Mr. Reifsnyder has brought in all papers he was asked to bring in. It wasn't necessary to search his office. He made it available to us.

A. I did likewise.

Q. If there are any others, you will make those accessible to us and we have your permission to look through them, is that what you mean?

A. That is right.

Q. In other words, you want us to have all the information and answers to all questions that we may make inquiry to?

A. Why, yes. I am willing and wish to do and have attempted to do that as far as I am concerned, I have. Now, I don't know what you have in mind, but I have no papers pertaining to the Central Forging Company.

Q. Mr. Michael, I have here a statement. "To whom it may concern: I am making available to the Federal Grand Jury sitting for the Middle District of Pennsylvania all records, correspondence, or any other information pertaining to the Central Forging Company that I may have in the custody or possession of whomever it may be." Will you sign that, sir?

A. I will after I have submitted it to my attorney. You want me to take it with me?

Q. No, you leave it here, and we will give it to you when [fol. 85a] we are—All right, you don't know now whether you want to give us all——.

A. Oh, yes, I do, and I have as far as I know, but when you ask me to sign a paper, my attorney has advised me, "Don't sign any papers until you talk them over with me." I don't see any reason for it, but after all, if he is going to represent me, he will represent me in the fullest extent. I see no reason why I shouldn't sign that paper.

Q. You are agreeing to the substance of it?

A. Absolutely. And if I knew where anything was that you don't have, I would be glad to go and get it for you, but I just don't know. I brought all down that I had.

(Grand Jury recessed for five minutes.)

Q. Mr. Michael, what conversation did you have with Mr. Harry Knight about your fees?

A. Why, I couldn't remember specifically what we discussed. How did you make the question?

Q. You know what fees are? You know what fees you received?

A. That is right.

Q. You know that Mr. Knight was representing the Maxi Manufacturing Company. Now, I am asking you what conversation you had with Mr. Harry Knight with reference to your fees that you were to receive.

A. We didn't discuss with Mr. Knight any fees, as far as that goes. It wasn't within his providence to dictate our fees or as to what we would ask for.

Q. Mr. Knight discussed with you his fees, didn't he?

A. I wouldn't exactly call it a discussion.

Q. Well, whatever it was. Whatever was said.

A. He mentioned the fact, as I recall, that he was going to ask for a fee of $7500.00. At what time or whether or not he told me that or whether he told that to Don Reifsnyder and Don Reifsnyder told me, I don't know, but I know that, by their services, in our calculation, as to the amount of money we would have to have left over for administration fees—well, we always sort of figured at least Harry and I—he was going to ask for $7500. Whether he told me that or where I got it, I couldn't be sure.

[fol. 86a] Q. You know that he cut his fee from $7500 to $5,000?

A. No, I believe his request for fee was $5500. It could have been more, it could have been less, I am not certain.

Q. You never had any discussion about that, and you never heard him say anything about it?

A. I think I have answered the question in the fact that I am not sure. There was something said, because if there wasn't I wouldn't have got the idea he was going to ask for $7500. Whether that was the discussion between Mr. Knight, and Don Reifsnyder, whether he told it to me or whether Harry Knight told me he was going to ask for $7500, I can't positively say I know. Certainly Mr. Knight did say "I am going to ask for $7500 for all the work I have done in the case." He was talking to Donald Reifsnyder about all the work he had done in the case, and I don't know whether he went ahead and told me that his work there has gone on before that. I think he was up there before. This case had gone up to an appellate court. I don't know which one that was. I don't know whether it was a state appellate court or whether it was the appellate court—the United States District Court of Appeals, but my understanding was he either took it up or it was taken up on an appeal or some previous things, and of course, this particular company has been kicked around for years. There was, as you can see, different litigations that has been involved here. It was first in the state courts and then it was in Federal courts, and there was half a dozen other law suits, as I understand. That is one of those that within just a little period is doing more than three times—or having merged in with another company, that is doing a successful war job on war contracts, and they have turned out millions of shells.

Q. We are not interested in how much work the Maxi Manufacturing Company is doing now. We are investigating the activity in bankruptcy of the Central Forging Company, and the interest that the stockholders in that company lost.

A. Well, if you were really investigating it, you will find they benefited by the whole thing.

[fol. 87a] Q. Of course, the stockholders and bondholders got how much? 5 percent, on their bonds?

A. I don't remember, but they got more than they would have got if they hadn't gone through with it this time. Already the Maxi Manufacturing Company——.

Q. We are not interested in it at the moment.

A. If you are interested in the real truth, you should be interested in——

Q. Interested in what?

A. In the fact that the bondholders got more for their bonds by going through with this plan than they would have had they waited and disposed of it at a trustee's sale.

Q. You don't think this grand jury should be interested in the reduction of the inventory by $5,000 so you could get the difference?

A. Absolutely, but I didn't get the difference.

Q. Suppose you go over this statement that you and Mr. Reifsnyder made out on the 25th day of April 1942 when you came to his office that Saturday morning to discuss yours and his expenses, and that check that you gave him of $3,893.80?

A. That is right.

Q. Now let's see where that $2500.00 came from that was added into the total amount.

A. I don't know of what you are speaking.

Q. You don't? You never heard before that Mr. Fenner turned over to you $2500.00? Did you?

A. I know he didn't.

Q. You know he did not?

A. That is correct.

Q. This isn't the first time you heard about that $2500, is it?

A. That is right, it is.

Q. It is?

A. It is. Except when you brought up the fact that he received $3,000 here the other day, that is all I know about it.

Q. Never heard anything about it before?

A. That is right.

Q. You know from what was said the other day Mr. Fenner got a check of $3,000 in your presence?

A. No, you told me he got a check for $3,000 in Harry Knight's office on the day of April 24th, but you did not

A. He might have got it in my presence.

Q. Substantially that?

A. He might have got it in my presence, but not to my knowledge.

Q. All right, sir, will you wait in the office there for just a few minutes. We will want you back.

[fol. 88a] *September 6, 1944*

By Mr. Goldschein:

Q. Mr. Michael, did you look for that memorandum book that you had during the time that you were trustee of the Central Forging Company, in which you made entries of expenditures?

A. I did; and I have been unable to locate it, and it is my belief that I had turned it over to Mr. Reifsnyder at the time that he prepared the expense account.

Q. You mean that memorandum that he wrote the expenses out on the 25th of April, 1942, and gave him the check?

A. No, no. It would be—I don't know to what you are referring—to the——

Q. You know the date that you gave him the check as being April 25th?

A. That is correct.

Q. You also stated that at that time that you were in his office on the morning of the 25th, you were going over the expenses with him and he was making notations on a pad on his desk as to the expenses that you were calling out to him.

A. No, I never made any such statement as that, Mr. Goldschein.

Q. You made no such statement as that?

A. No, sir. My story to you and the statement I made was that we went over nothing. I went in there to see him, and I said to him "How much do you want, what does it figure out?" And he said "I want a check for a

certain amount," and I said, "Well, this is not the correct amount," and he said "No, that is not, but I want that."

Q. And you didn't say anything about him making notations as you called off expenses, on his desk?

A. Not to my recollection.

Q. You are certain about that?

A. Positive.

Q. We will go into that a little bit later. I will have to get the transcript. Now, I showed you when your were here last a letter from Mr. Knight to Mr. Davis, dated April 9, 1942, did I not?

A. No, I don't recall that letter.

Q. You don't?

A. No.

Q. All right, let's see whether or not I can refresh your memory on that. In which letter Mr. Knight referred to a [fol. 89a] conference had between you and Donald Reifsnyder in his office on April 8th.

A. The only letter you show-d me is the letter that Mr.—copy of letter which apparently was written by Mr. Reifsnyder to Mr. Knight. You showed me no other letters at that time.

Q. Didn't I? All right, see if you can recall the facts set forth in this letter, a copy of this letter that I am now reading from, marked Grand Jury Exhibit 8, Harry Knight. The second paragraph begins with "Last evening about 8 o'clock Don Reifsnyder called at my home. He said that he and Mr. Michael had had dinner in Sunbury and talked over, in detail the problem which we discussed here for an hour or two about getting the extra money, and made a suggestion that it be paid to a lawyer whom he designated who would render a bill to the Maxi Company, namely, that the Maxi Company now pay to a trustee $22,982, being $3,000 less than the amount we calculated and then later on pay the $3,000 to a lawyer to be designated by Don who would render a bill and they would arrange then to get this $3,000. Did you ever hear that before?

A. Never.

Q. All right: Since you hear it now for the first time, does it refresh your recollection on a conference that you had in Mr. Knight's office on April 9, 1942, at which time you, Mr. Reifsnyder, Mr. Davis, and Mr. Knight were present?

A. I would not say we did not have a conference on that day. I don't remember that, but this matter I never discussed.

Q. You never discussed it?

A. No. We might have had a meeting on April 9th. We might have had a meeting on any day you will designate. I have no way of telling when we met, but we did meet. There is no question about it. We had many meetings, but as to the dates, I could not tell you.

Q. You remember the meeting on the 24th of April, 1942, at which time you got your check?

A. That is correct.

Q. Now, you remember you had some conversation previous to that with Mr. Knight and Mr. Davis in the presence of—with Mr. Reifsnyder?

A. That is right.

[fol. 90a] Q. Now, at one of those conferences with Mr. Davis and Mr. Knight and Mr. Reifsnyder, you discussed additional fees that you were to get?

A. That I was to get?

Q. You and Mr. Reifsnyder was to get?

A. No.

Q. Did not?

A. No.

Q. All right. Did Mr. Knight ever say to you that he will pay this—have this $3,000 paid to Mr. Fenner, who will then in turn pay it to you?

A. Did Mr. Knight say that to me?

Q. Yes.

A. No, he did not.

Q. Did not say that to you. All right. At the time of the conference on April 24, 1942, in Mr. Knight's office, did you walk into the library with Mr. Fenner and Mr. Reifsnyder and did you there discuss the disposition of the $3,000?

A. No.

Q. Do you deny that at that time you gave Mr. Reifsnyder $500 to give to Mr. Fenner to pay the income tax on that $3,000?

A. Absolutely deny it.

Q. Now, did you go to the bank, the Catawissa National Bank with Mr. Davis, Mr. Reifsnyder, Mr. Fenner and Mr. Long?

A. When?

Q. On the 24th after you left Mr. Knight's office and had lunch?

A. I can't remember whether we did or not. We went to the bank after that meeting sometime, whether it was that day or not, for the purpose of turning over papers, to give papers to Mr. Unangst, but whether it was that day or not, I can't recall that.

Q. And you also went over there to pay him $225?

A. I think we paid him at that time.

Q. Of course, and you got a receipt from him on that date, April 24, 1942, didn't you?

A. I didn't get it that I know of.

Q. You didn't get it? Do you know anybody else that got it on the 24th?

A. Mr. Reifsnyder might have.

Q. Weren't you with him that afternoon?

A. Yes, but I don't remember getting the receipt. Apparently I did, because it is part of my papers.

Q. You went with Mr. Reifsnyder and Mr. Fenner and Mr. Long to the bank?

A. I would not say positively, but I might, but I would not say for sure.

[fol. 91a] Q. You might what?

A. I might have gone there.

Q. Now, didn't Mr. Unangst, in your presence, come in and put $3,000 down on the table right in front of you?

A. He did not.

Q. You deny you got any of that $3,000?

A. I certainly do.

Q. Will you explain to this grand jury again how you happened to figure up the amount that Mr. Reifsnyder was to get as $3893.80?

A. I did not figure it up. He figured it up.

Q. Can you explain to this grand jury how you arrived at that figure?

A. I have told you that I took his figures for it.

Q. You didn't make any independent computation at all?

A. No.

Q. You knew that he had $3950 coming, didn't you? According to the court order.

A. Yes.

Q. You also knew that he had $234.58 as expenses on one item and $50.90 expenses on another item?

A. Those figures sound correct.

Q. You knew then by that that he had over $4000 coming to him?

A. That is correct.

Q. All right. And you can't tell this grand jury why you did not ask him some questions of him why he was asking for less than the court allowed him?

A. Yes, I did ask him. He said that is what he wanted today, and we will straighten the rest out later.

Q. And when did you straighten the rest out?

A. I told you when we went to make a subsequent trip that I gave him $500 that he said he wanted to give Hervey Smith $500, and at that time I gave him $500. I don't remember whether it was on the way down or on the way back, but we stopped, went to the country club in Bloomsburg, or the golf club, and Don went out and gave him $500.

Q. You are sure about that?

A. I am positive.

Q. Positive it happened that way?

A. That is right.

Q. You didn't give him the $500 before you got back to Scranton?

A. No.

Q. You did not go before to see Hervey Smith before you came back to Scranton?

A. No.

Q. You are certain about that?

A. I am positive.

[fol. 92a] Q. And the only time you gave Reifsnyder $500 additional to this $3893.80 was on the date that you say, some time later?

A. That is correct.

Q. Now that $5000 was more than he had coming to him, wasn't it?

A. That is correct.

Q. How was that?

A. Well, I don't know exactly who—why—how to explain it other than he wanted to give Hervey $500 at that time. I don't think he made plans for it. He said, "We ought to stop, I owe him $500." "I have $500 with me, if you want that. We can straighten it up later." I don't remember word for word of the conversation.

Q. When was that $500, sometime after you gave him the check of $3800?

A. That is right.

Q. Now, when did you ever figure out how much Reifsnyder had coming to him?

A. I don't know. It was some time after that. It must have been two or three weeks or so.

Q. Where were you when you figured that out?

A. I don't remember.

Q. What did you do about it?

A. He paid me.

Q. He paid you?

A. He either gave me a check or cash. There was some difference there.

Q. You have gone through your records since then, haven't you?

A. I have, but not with the intention of finding out what I did with that particular money. If that is what you mean.

Q. That is exactly what I mean.

A. Of course I would not be able to tell that because my personal records at that time, as your investigators have gone over it very carefully, and they know how my personal records are, very confusing to me. While I was at the country club. And they have gone item for item and it is very easily explained, any person that went over it could easily see how my personal records would be in that condition. In other words, I would have a hundred in my pocket at one time, then I would go and cash a check for $300 or $400 and if you want me to explain it to the jury I will be glad to.

[fol. 93a] Q. Explain what to the jury?

A. How I would be able to get $100 and have no record of it. You have my checks there. You have my statements and everything and when I was at the country club the method up there was the fact that we had a treasurer who signed the checks, and if I wanted to buy liquor at the liquor store, I would go down and it might be $300 or $400 worth of liquor and take the slip and give it to the girl in the office, and she would give me a cash check. Sometimes I would accumulate as much as two or three bills like that. I would pay it out to the people we bought produce from. As a matter of fact I had several hundred dollars of the club's money which I kept in a box in the safe for that purpose. So I would sometimes have $400 or $500 in my pocket, then in a week's time I might get down where I only had $5, then I would cash some of these checks for $500 or $600. Also as you already know, as

I told them, we had slot machine up there. I would be down town and would need money for the machines, and not have that much money and I would go to the First National Bank and cash $500 check of my own, a personal check, and get coins which I would take back to the club and turn over to the girl and the bar-tender and get bills to replenish my own. I might come down a few weeks later and instead of putting $500 in the bank, I would deposit $400 and have $100 which I would use for my spending money. So when anyone would pay me $100, if it was in cash, I would put it in my pocket and also I was constantly cashing checks for people. I have ever cashed $400 worth of checks in one day, and I might deposit $200 to my account and get $200 worth of quarters to take back up. So you ask me to identify what I did with that $200 that somebody gave me.

Q. You don't remember how much you got, do you?

A. No, not exactly.

Q. Why?

A. I don't know. It did not make too much of an impression on me.

Q. It didn't make any impression?

A. I can't go back two years and say how much a person owed me.

Q. I am not talking about how much he owed you. I am talking about how much he gave you.

A. Whatever he owed me.

[fol. 94a] Q. Had some additional litigation in that case, didn't he?

A. Yes.

Q. Was he getting anything extra for that additional litigation?

A. Yes, but I never gave him anything for it, not to my knowledge.

Q. You didn't call quits the extra money he was supposed to get, did you?

A. No.

Q. Sure about that?

A. I am rather positive about it.

Q. What makes it so clear in your mind?

A. I don't know. I am naturally picking it out of my mind, but I am almost certain he gave me money, but I can't remember where.

Q. You can't remember whether it was a check or money?

A. That is right. I have asked you if you would verify it with his account, whether it was a check or cash.

Q. I can tell you this—there wasn't any check. You want to know what he said about it?

A. No, I am not interested in what he said about it.

Q. You are not interested in it?

A. No.

Q. You just want to see his checks?

A. No, I only asked——

Q. The end of the month, though, you can balance your accounts as to what you took out of your account and what you put back?

A. I could at the time.

Q. Do you remember receiving a $500 fee in the Eddington Distilling case?

A. Yes, I did. Not a fee.

Q. What was it?

A. I don't know exactly how to classify it. It was partially to expenses and partially for work that I had done.

Q. Do you remember on that same day your attention was called to the fact that you withdrew $250 from the account?

A. I don't recall that. It could be.

Q. Weren't you asked anything at all about it in the Eddington case?

A. I don't recall that they asked me why I withdrew $250. They may have. There were fifteen or twenty items there that they were asking me about, and I tried to explain them all.

Q. But you don't even recall telling them what you did with that $250, do you?

A. No.

[fol. 95a] Q. Do you know what $250 I am talking about?

A. No.

Q. Let's step outside for a minute and I will get the check so that we will both be talking about the same thing. (Witness leaves the room, while Mr. Goldschein obtains check referred to.) The sum I am referring to is $225 instead of $250. Withdrawn by you on January 26, 1942, to Cash. Now $225 is not an ordinary sum is it?

A. No, but yet it would be an ordinary sum for me to withdraw. It would be rather ordinary.

Q. How many times a month did you draw a sum like $225?

A. I don't know. But it would not be at all unusual for me to make up a slip to get money for the slot machines and figure I needed so many quarters, so many dimes and so many nickels, and it comes out to $225. It would be very likely to be a check like that.

Q. Then when you came back to the club you would get your $225 and deposit it?

A. I have tried to explain it, the procedure of the thing. I returned to the club. I would come down and get $225 or some times as much as $500 and put it in a box in the safe deposit box, which was a part of the safe. I might not get money back on that for as much as a week or two. I might get part of it back. So then in the meantime I might take the $225 up and turn it over to the girl that worked there, and she gave me $225 because even to go down and pick up liquor, I would go down and pick up maybe $175 worth, then I would cash that for myself. The usual procedure of business.

Q. Did you ever cash any checks for Donald Johnson?

A. We cashed checks for every member of the club, so I could not identify, or say yes to any specific check, but the chances are we cashed lots of them.

Q. Any loans to Donald Johnson?

A. No, not of any size. I might have loaned him $10 or $20. I used do that for a great many members. I have loaned as much as $200 to a member.

Q. Did you ever loan $225 to a member?

A. No.

[fol. 96a] Q. You are sure?

A. I am positive. Now, I would not say I am just sure of $225. I might have. As a matter of fact, there is one man in particular that I used to loan $200 to several times.

Q. Who did loan $225 to?

A. I don't know. I don't ever remember loaning $225 to anyone.

Q. You are sure you didn't lend it to Donald Johnson?

A. Positive.

Q. Why are you so positive?

A. Because I can't recall it.

Q. You said a few minutes ago you might have loaned $225.00 to a member of the club.

A. That is correct. I might have, but I don't recall loaning such money as that to Donald Johnson.

Q. If you had loaned it to somebody you would not know who it was, would you?

A. If I loaned such money to a man, I am quite sure I would be able to recall it.

Q. Who did you loan the $200 to?

A. I don't say I loaned exactly $200 to anyone.

Q. You didn't use the word "exactly", but you said you loaned somebody $200, didn't you?

A. Yes.

Q. Who did you loan it to?

A. I would rather not say who I loaned it to. Do I have to answer that question here?

Q. You certainly do.

A. Personally I don't think it is a very fair question because the man I am going to name is a very high class man, and just because I loaned——

Q. Did he commit a crime by borrowing $200 from you?

A. No, but I don't see why his name has to be mentioned here. But if it has to, it is C. J. Layfield.

Q. Who else did you loan any money to?

A. Nobody else.

Q. And you are certain you didn't loan $225 to Donald Johnson on that day?

A. No, I am rather sure of that.

Q. You are sure you didn't loan $225 to Donald Johnson on that day?

A. Yes.

Q. Have you been thinking anything at all about that $600 check that you made payable to Homer Davis and [fol. 97a] Max P. Long on April 10, 1942, as trustee of the Central Forging Company?

A. What do you mean, thinking about it?

Q. Have you tried to remember why you made out those two checks payable to them?

A. I didn't make out two checks payable to them.

Q. Signed two checks payable to them.

A. I can't remember signing two checks payable to them. That is the only thing.

Q. You can't recall having signed it?

A. That is right. I don't deny having signed it, but I can't recall specifically doing it.

Q. You don't know what it is for?

A. That is right.

Q. It wasn't for salaries, because the salary had been paid. Did not have and $600 salary coming, did he?

A. No, I would not have signed for a straight salary.

Q. You would not have signed it for a bonus either, would you?

A. Well, not exactly.

Q. What do you mean by that?

A. Both Mr. Davis and Max Long had asked me for salary increases. I told them at the time I asked "I am in no position, I am new here. We are trying to merge or sell or dispose of, do something with this property, and I can't run right back and ask for salary increases." Their argument was we were giving salary increases to the other workmen. We were forced to do that by the union. I said, I told them to be patient and when we are done, if we are going to continue operating, we will have to increase their salaries, or maybe we can work a bonus out, but I don't know.

Q. You discussed bonus with them?

A. Yes, that is correct. I did.

Q. Now, who did you take that bonus up with?

A. I didn't take it up with anyone.

Q. With Mr. Fred Long?

A. I don't remember that. I might have mentioned it to Mr. Long that they had asked me for an increase if that would be called a discussion, yes, I had discussed it with him. As a matter of fact, he was the manager and really head of the plant. I discussed everything with him, or rather he discussed it with me.

[fol. 98a] Q. You say he discussed with you or you discussed with him the $600 checks to Max P Long and Homer Davis?

A. No, I didn't say that.

Q. What did you say?

A. We discussed bonuses.

Q. What relationship has that to the $600 checks?

A. The only thing I can see is that if they both decided to take a bonus and put the checks through, I don't remember ever having given them authority to do it, and don't remember signing the checks, but that may be the

explanation for it, that they assumed they were entitled to the bonus and took it that way.

Q. Do you recall what you did with those checks payable to cash, in the sum of $1,000?

A. I turned them back to the company.

Q. Who did you turn them back to?

A. They were mailed back with other checks.

Q. You are sure they were mailed back?

A. Yes.

Q. You were not in Catawissa and signed them there?

A. No, I am sure of that. But it could be. I might have signed them down there.

Q. Can you tell us what makes you so sure?

A. I am not so sure. As a matter of fact, I have told you from the beginning that I can't remember where I signed any specific check. Some of them were signed up here. The majority of them were signed up here; and some of them were signed down there. The reason because they had to be signed by John Crolly, and it was not possible for me to go down and just sign checks. They had to be remailed to Scranton, because Mr. Crolly never went down. So they were mailed, generally to Mr. Crolly, and he would sign them, and I would pick them up and sign them here, or if I was going to Catawissa that day, I would sign them down there sometimes. So where any particular place I signed a check, I can't honestly say.

Q. Your expense in this reorganization was $234.58, is that right?

A. I assume so. I don't know for sure. I can't remember.

Q. Where have you the figures?

A. They were supposed to be in Mr. Reifsnyder's.

Q. He has got the figures as $234.58. Does that sound right?

A. It sounds right.

[fol. 99a] Q. It was just one cent more than his, $234.57 was his, according to his figures.

A. I don't know.

Q. You know his initial, don't you?

A. That is right.

Q. You know his handwriting, don't you?

A. Well, I would not be too familiar with it. I think I might recognize it.

Q. Would you recognize this as being his handwriting, with his initial anyway, wouldn't you?

A. No, I would not say I would.

Q. Wouldn't you?

A. No, it looks like his handwriting.

Q. R. M. would be you, wouldn't it?

A. I would imagine so.

Q. $234.58 would be opposite your name as the figure written out for you?

A. That is right. I would imagine so.

Q. And $234.57 for him?

A. That is right.

Q. J. D. R.?

A. That is right. Yes, as a matter of fact, the expense account was bulked in and divided into two parts.

Q. (Mr. Michael in answering the question was examining a photostat marked at the top "Recap," marked on the bottom in the right hand corner with a 2 and a circle around it and the initials written in ink there under JDR). Is that right?

A. That is right.

Q. Now, did you ever have a discussion with Mr. Knight about an increase in fees in excess of the money that was to be allowed you by the court?

A. No.

Q. Did you ever discuss it with Mr. Davis?

A. No.

Q. Did Mr. Reifsnyder ever discuss it in your presence?

A. Not to my knowledge, no.

Q. He could not very well discuss it in your presence without you knowing about, could he?

A. I suppose. It all depends on what you mean by presence.

Q. With you present while he is talking.

A. No, he could not.

Q. And you never had any discussion about the $3,000

Q. And you never did see Mr. Reifsnyder give Mr Fenner $500 with which to pay that?

A. I did not.

Q. All right, sir, that is all for the present. If you will wait outside, we will continue further with you.

September 7, 1941

By Mr. Goldschein:

Q. Mr. Michael, do you recall whether or not you had a specific day for appearing at the Central Forging Company in Catawissa in connection with your duties as trustee in reorganization?

A. No.

Q. Do you recall whether or not you made an appearance there every Friday?

A. No, I don't think I did.

Q. Do you recall discussing with Mr. Davis the signing of those five checks that you were shown on previous occasions, one for Mr. F. Max Long in the sum of $600.00, one to Homer Davis in the sum of $600.00, one $300.00 payable to cash, one in the sum of $250.00 payable to cash, and one in the sum of $450 payable to cash. Do you recall my calling your attention to those checks?

A. I do.

Q. Let me ask you if you will deny discussing those checks with Mr. Davis on April 10, 1942?

A. I deny that, yes, sir.

Q. You deny that? Do you deny that you asked Mr. Davis to write out those checks?

A. I do absolutely.

Q. Do you deny that after he wrote those checks out you took them away with you?

A. I certainly do.

Q. Do you deny that on the 17th day of April you sent those checks back to him at the Central Forging Company

gether with these two for $600.00 cashed and the sum given to this lady who you were sending up with those checks?

[fol. 101a] A. I certainly do. I never did any such thing as that.

Q. Do you deny that that woman brought back money to you?

A. I certainly do.

Q. Do you deny telling him that on that particular day that he doesn't understand proceedings of this sort, that you have got to spread a little oil in a matter of this sort, the bankruptcy proceedings in order to get things done?

A. I deny telling him that. Absolutely I do.

Q. Do you *deny* telling him that that would not have anything at all to do with the $3,000 concerning which you discussed with Mr. Knight on the 8th of April, 1942?

A. I certainly deny it.

Q. Do you deny that you were in Mr. Knight's office on April 8th, 1942, with Mr. Reifsnyder, at which Mr. Davis and Mr. Knight were present for a conference?

A. I don't deny it, but I couldn't admit it because I can't remember that specific meeting. It could be.

Q. All right, now. Do you deny that you discussed or were present when a proposal was made to Mr. Knight that he deduct or that you will deduct as trustee of the Central Forging Company $3,000 of the accounts receivable to be reported in return for which the Maxi manufacturing Company, for *your* fee and Mr. Reifsnyder a fee or a sum of $3,000?

A. Is that the end of the question?

Q. Yes.

A. I deny that. Absolutely.

Q. Now, *for* you deny that on April 24, 1942, you and Mr. Reifsnyder picked up Mr. Fenner, Mr. George Fenner, Sr. in Wilkes-Barre, Pa., and drove with him or he riding with you to Mr. Knight's office at Sunbury?

A. What was the date?

Q. April 24, 1942?

A. I am not sure. We picked him up one time and it could have been that one, but I don't recall definitely.

Q. Do you recall whether on the date the settlement was made, the date that you received your check from the Maxi

Manufacturing Company, for your fee and Mr. Reifsnyder's fee in connection with your duties as trustee of the Central Forging Company that you picked Mr. Fenner up and drove with him to Sunbury?

[fol. 102a] A. No, I deny that?

Q. Do you recall——

A. Well, as I said, I am positive, I would be inclined to believe that that is true, but I am not absolutely certain. I remember we picked Mr. Fenner up on one occasion. As I remember only once and drove him down, but I can't remember on what occasion or why.

Q. Do you deny that you discussed with Mr. Fenner the fact that he was to receive $3,000 from the Maxi Manufacturing Company as fees for legal services and that he in turn was to turn over to you and Mr. Reifsnyder $2500.00 and keep $500.00 for the payment of income taxes on that?

A. I never discussed with Mr. Fenner anything about $3,000.

Q. Do you deny that you were present when such a discussion took place with Mr. Fenner?

A. If it did, I didn't hear it. And if it was in my immediate presence, I am certain I would have heard it.

Q. Do you deny that such a conversation took place in the automobile in which you were riding from Wilkes-Barre to Sunbury?

A. I do, yes.

Q. Do you deny that Mr. Fenner received from Mr. Reifsnyder $500.00 for the payment of the income tax on $3,000 in Mr. Knight's office in your presence?

A. Yes, I deny that. In my presence?

Q. Yes, in your presence?

A. That is right.

Q. Do you deny that the inventory, the accounts receivable of the Central Forging Company, were reduced by $3,000?

A. Well I wouldn't say they were reduced. I would say this, that there was a settlement as to the actual value of them. In other words, we had an account there that they probably owed us a certain amount of money, and the discussion came up as to the real value and since it would be admitted off hand that accounts receivable is seldom worth 100 cents on the dollar, there was a long discussion as

to just what they were worth, whether ten cents on the dollar of fifty cents on the dolla-.

Q. Do you deny that discussion took place on April 8, [fol. 103a] 1942 in Mr. Knight's office?

A. I couldn't be positive if it took place.

Q. Do you deny that you were present at a conference between Mr. Hervey Smith and Mr. Reifsnyder at which time Mr. Hervey Smith was offered $500.00 if he could get his clien-, the Beckley's to agree to your plan of organization?

A. Yes, that never took place in my presence. If such a proposition was made I didn't know it had been made in that way.

Q. Now, would it change the situation any if I were to ask you whether or not you recall that $3,000 was to be deducted from the receivables?

A. I don't remember just how or what point or what percentage we took, but to my knowledge there was never any lump sum deducted from the receivables. It was figured out on a percentage basis. We took twenty percent off or —— — percent or whatever it might have been.

Q. Who did you discuss that with?

A. That was discussed—Well, it was discussed with Mr. Knight, Mr. Davis, Mr. Long, at various times when we were attempting to arrive at a figure as to the value of the property, the estate.

Q. Now, I want you to look at a letter which you read on a previous occasion. This is a copy of a letter from Don Reifsnyder to Harry S. Knight, Esq., dated April 9, 1942, Re: Central Forging Company, the first paragraph beginning with "To confirm our discussion in your office yesterday, I hereby give you the trustee's answer to the question raised." And ask you to read that and see whether or not it refreshes your recollection of a conference that you had in Mr. Knight's office on April 8, 1942.

A. Well, that could be.

Q. What could be?

A. It could be that we finally did compromise on a flat allowance of $3,000.

Q. Then you didn't knock off a percentage?

A. We were discussing percentages, and I am not sure we didn't stick to the percentages, but you tell me this is a [fol. 104a] letter Mr. Reifsnyder wrote, and assuming it

to be true, I don't recollect that we did deduct a flat allowance of $3,000.

Q. Don't take my say so on the fact that that letter was a copy of a letter written by Mr. Reifsnyder. I want you to read the letter and see whether the facts are true.

A. I can't remember whether they are or not. If you will read the letter over. "Your request to be allowed 20% seems to Mr. Michael and me to be too much. . . . To compromise the situation, I suggest that a flat allowance of $3,000 is proper." But I don't know yet whether it was $3,000 or ten percent or twenty percent.

Q. What business are you in now?

A. Manufacture of wood products.

Q. How long have you been in the business of manufacturing wood products?

A. Two years.

Q. What wood products are you manufacturing, what kind?

A. I have manufactured different kinds. Lawn furniture, and at the present time I am manufacturing a ladies vanity dresser with a stool. A companion piece, that is, it is a set.

Q. All right, sir, I believe that is about all.

[fol. 105a] In United States District Court

[Title omitted]

Motion to Dismiss

To the Honorable William F. Smith, United States District Judge, in the District Court of the United States for the Middle District of Pennsylvania, at Scranton, Pennsylvania:

Robert Michael, by his attorneys, Stanley F. Coar and D. H. Jenkins, respectfully moves the Court to revoke the Order to show cause heretofore granted in the above captioned matter on September 14, 1944, and to dismiss the proceedings for the following reasons:

One. There is no competent evidence in this proceeding from which any obstruction of justice can be found.

Two. There is no competent evidence in this proceeding from which any contempt of Court can be found.

Three. There is no competent evidence in this proceeding from which it can be found that any contempt was committed in the presence of the Court.

Four. The evidence in this case establishes definitely that there was no obstruction of justice.

[fol. 106a] *Five.* The Court is without jurisdiction, there being no proper presentment before it.

(Signed) Stanley F. Coar, D. H. Jenkins, Attorneys pro Respondent.

[fol. 107a] In United States District Court, Middle District of Pennsylvania

No. 11205

In the Matter of Robert Michael

Judgment and Commitment

This matter having been heard on a petition duly filed herein by the direction of the Grand Jury, March Term, 1944, charging the respondent, Robert Michael, a witness before the said Grand Jury, with contempt of this Court as fully set forth in the said petition; and the said Robert Michael, in obedience to an order to show cause issued on the said petition, having appeared personally and by counsel; and this Court having heard and considered the testimony and having read and considered documentary evidence; and

It appearing to the Court: First, that the said Robert Michael appeared before the said Grand Jury and was duly sworn as a witness; second, that the testimony which the Grand Jury endeavored to elicit from the said Robert Michael was relevant and material to its inquiry; third, that the testimony of the said Robert Michael, and particularly the testimony appearing on pages 18, 19, 21, 39, 40, 41, 42, 43, 44, 47, 48, 49, 51, 56, 58, 59, 60, 66, 67, 69, 70 and 71, of the Transcript of Testimony, Government Exhibit No. 9, was false and evasive; and fourth, that the

false and evasive testimony given by the said Robert Michael obstructed the said Grand Jury in its inquiry and the due administration of justice;

The said Robert Michael is adjudged guilty of contempt of this Court as charged in the said petition and is hereby [fol. 108a] committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of six months.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Entered this 22nd day of September 1944.

(Signed) William F. Smith, Judge, United States District Court.

Now, to wit, September 22, A. D. 1944, executed the within Judgment and Commitment by committing Robert Michael into the custody of the Warden, Lackawanna County Jail, Scranton, Pennsylvania.

So Answers: Robert W. Rabb, United States Marshal, by Michael C. Cavanaugh, Chief Deputy.

[fol. 109a] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF COUNSEL AND ORDER OF COURT THEREON

Now, October 19, 1944, it is stipulated by and between Daniel H. Jenkins and Stanley F. Coar, Esqs., Attorneys for Robert Michael, M. H. Goldschein, Special Assistant to the United States Attorney General, Attorney for the United States Government, that on the appeal to the Third Circuit Court of Appeals in the above captioned matter, the record shall consist of the following:

(1) Petition to hold in contempt and the order of court thereon.

(2) Petition by defendant for bill of particulars and the order of court denying the same.

(3) Motion to quash the original petition and to dismiss the proceedings and the order of court thereon.

(4) The transcript of the testimony of Robert Michael before the Grand Jury.

(4a) Answer of defendant to petition for contempt.

(5) The original transcript of the testimony in the proceedings together with photostatic copies of the exhibits in the evidence being Government's Exhibits 1, 2, 3, 4, 5, 6, [fol. 110a] and from Government's Exhibit 11, the following files in the bankruptcy proceeding No. 9822 in the District Court of the United States for the Middle District of Pennsylvania:

(a) Order of court appointing Robert Michael successor-trustee;

(b) Order of court appointing Donald Reifsnyder counsel for the successor trustee.

(c) The final account of Robert Michael as successor trustee.

(6) Motion to revoke the order to show cause why Robert Michael should not be held in contempt and to dismiss the proceedings.

(7) The judgment and order of the court.

(Signed) Daniel H. Jenkins, Stanley F. Coar, Attorneys for Robert Michael. (Signed) M. H. Goldschein, Special Assistant to the Attorney General, Attorney for U. S. Government.

ORDER OF COURT

Now, October 19, 1944, the above and foregoing stipulation of counsel is approved, and the Clerk of the United States District Court for the Middle District of Pennsyl- [fol. 111a] vania is directed to transmit to the Clerk of the Third Circuit Court as record on appeal in the above captioned case to the said court, the above described filed papers and testimony.

In addition thereto, at the request of the Special Assistant to the Attorney General, here counsel for the Government, it is stated that the petition asking for an order to show cause why Robert Michael should not be held in contempt was presented to the undersigned in open court room, in the presence of the grand jury, and in the presence of

Robert Michael, and his counsel, Daniel H. Jenkins. This statement of fact is objected to as part of the record by counsel for the defendant. His objection is overruled, and an exception is allowed.

(Signed) William F. Smith, U. S. District Judge, District of New Jersey, Specially Presiding.

[fol. 112a] In United States District Court

[Title omitted]

Order as to Record

Now, October 23, 1944, it is ordered in addition to those matters described in the stipulation of counsel as to what shall constitute the record of appeal in the above captioned case, that the Answer filed by the Defendant shall be sent up with the record.

It is further ordered that photostatic copies of Government's exhibits Nos. 1, 2, 3, 4, 5 and 6 shall be substituted for the originals of the same exhibits, respectively, and shall be part of the record on appeal in this case.

(Signed) William F. Smith, U. S. District Judge, District of New Jersey, Specially Presiding.

[fol. 113a] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 114a] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8734

In the Matter of ROBERT MICHAEL, a Grand Jury Witness

Appeal from Judgment and Sentence of the District Court for the Middle District of Pennsylvania, No. 11205

Appendix to Brief for the Appellee

[fol. 1] TESTIMONY OF HARRY S. KNIGHT AT THE TRIAL

(Tr. 13)

. . . . . .

By Mr. Goldschein:

Q. Now, as attorney for the Maxi Manufacturing Company, Mr. Knight, for that plan of reorganization will you tell us whether or not you had any conferences with the trustee under that proceeding during the year 1942?

A. I had.

Q. And who was the trustee in that case?

A. Mr. Michael.

Q. Now, who was Mr. Michael's attorney in that case?

A. Mr. Reifsnyder.

. . . . . .

(Tr. 21)

Q. Now, will you look at this letter marked Government Exhibit No. 2 and tell us whether or not you identify that letter as a letter coming from your file?

A. I identify this letter dated April 9th addressed to Homer Davis and marked G-2, as being a copy of a letter which I wrote to Homer Davis, and I identify it as coming from my files and it is endorsed thereon, in my own handwriting, "From files of H. S. K., August 31, 1944."

. . . . . .

(Tr. 28)

The Court: Proceed.

Q. Now, Mr. Knight, will you tell the Court what was said between you, Mr. Michael and Mr. Reifsnyder on April 8,

[fol. 2] 1942, at that conference in your office with reference to the Central Forging Company?

(Tr. 31)

A. (Continuing) A statement was then made they could deduct that $3,000 from the amount of the inventory as shown, in addition to some smaller amounts that had been deducted by agreement, such as amounts that had been previously paid for administration expenses in the three months, and I think some amounts that had probably been set aside, a few hundred dollars, to pay some Columbia County Common Pleas expenses, that they would deduct this $3,000 from that and then give a check for $3,000 separate.

The Court: Mr. Knight, let me interrupt just a moment.

(Tr. 32)

The Witness: Certainly.

The Court: (Continuing) To see if I fully understand this plan or scheme. The top price which your client was to offer was not altered by the plan in any way?

The Witness: Was not what?

The Court: Was not altered.

The Witness: That's right.

The Court: Wasn't altered by the plan.

The Witness: That's right.

The Court: The only thing that was altered was the manner of its payment, is that right?

[fol. 3] The Witness: Well, when you speak of plan do you speak of the plan that was filed in reorganization?

The Court: No, the scheme, we will call it.

The Witness: Oh. Well, all right, let's designate it as a scheme.

The Court: These negotiations that preceded the plan of reorganization we will term a scheme, and your offer remained the same, as I understand.

The Witness: Absolutely, absolutely.

The Court: But you were to pay the amount of the offer, less $3,000, into the debtor's estate, we will say, is that correct?

(Tr. 33)

The Witness: Give it to Mr. Michael as trustee, yes.

The Court: The assets were to then suffer by some manner in which you were not interested a proportionate reduction in value, appraised value?

The Witness: That's right.

. . . . . .

(Tr. 39)

The Court: Scheme, yes,—was to be payable to Mr. Fenner, but the cash was to go Mr. Reifsnyder and Mr. Michael.

Mr. Coar: No, he didn't say that, your Honor, he didn't say that.

The Court: What was the purpose of the $3,000 check?

[fol. 4] Mr. Coar: He said he didn't know.

The Witness: I don't know.

The Court: Well, I am asking him again because I am the person who has got to decide the factual issue and I want to know. I refuse to be kept in the dark and if I see fit to ask questions that will enlighten my mind I will ask them. I am the person who wants to know.

Mr. Coar: Yes, your Honor, and so do we.

The Witness: I will answer your question.

The Court: Go on.

The Witness: I know that it was stated there by one of these men, and I can't tell you which one, that they would get back the money of the $3,000 check.

. . . . . .

(Tr. 41)

Q. Now, will you tell the Court, please, what Mr. Michael or Mr. Reifsnyder said in Mr. Michael's presence with reference to their fees?

A. My recollection is at the time the fees had either been allowed by the court—the record will show that—or had been rather tacitly understood what they were to get. I know we had several conferences in which we sat down with pencil and paper and figured out how much this particular cost would be, that particular cost, and how much fees would the court possibly allow to me and to them and all the way [fol. 5] through. We had numerous figures on that. Both Mr. Michael and Mr. Reifsnyder were not satisfied—I better

put it not pleased—with the fee that was allowed to them, or at least they had been led to believe would be allowed to them.

Q. Now, Mr. Knight, do you recall whether or not you related what took place at this conference between yourself and Michael and Reifsnyder with your clients on that particular day?

A. I am reasonably sure that some time that day I—if not that day immediately following—I told the substance of the conversation, so far as the $3,000 was concerned, to Mr. Davis, and as you will note, I wrote a letter to him on April 9th giving the resume.

(Tr. 47)

* * * * * * *

Q. Now, Mr. Knight, did you receive any communication from Mr. Reifsnyder in connection with that conference that you had on April 8, 1942?

A. You mean the conference on April 8th?

Q. The conference on April 8th?

A. I did.

(Tr. 48)

(Government Exhibit G-3 marked for identification, as of this date.)

(Exhibit G-3 for identification handed to defense counsel.)

Q. Now, can you identify this letter, Government's identification No. 3?

A. Yes; that letter, signed "Donald Reifsnyder," ad- [fol. 6] dressed "Harry S. Knight, re Central Forging Company," dated April 9th was taken from my files by the Government agents with my permission and it is marked in my own handwriting, "From files of H. S. K., August 31, 1944."

Q. How did you receive it, Mr. Knight?

A. In the usual course, through the mail.

Q. Through the mail. Did you have any conversation with Mr. Reifsnyder about that letter?

A. Well, this letter was written in pursuance of a conversation that took place at my office the day before and it so states on its face.

(Tr. 60)

Q. Yes, what did you say to Mr. Michael and what did he say to you?

A. This was during the conversation about the $3,000 being separated and being paid in a separate check, to all of which I testified this morning. I remember saying to Mr. Michael—probably addressing it to both but in the end probably addressing it particularly to Mr. Michael——

Mr. Coar: Did you say probably?

The Witness: I said addressing to both but in the end addressing particularly to Mr. Michael.

Mr. Coar: All right.

(Tr. 60-61)

[fol. 7] A. (Continuing) which will develop in my statement—I stated that it made no difference to me or to my clients how we paid the money as long as we were paying no more than the original amount, that my interest was to get the proper deed, bill of sale and assignments and so forth, and that was my purpose.

"You are under bond and an officer of the court——"

Q. Who was that addressed to?

The Court: Mr. Michael, he said.

Q. Mr. Michael?

A. That's right. They were both there to hear it but Mr. Reifsnyder was not under bond. (Continuing)—"—and it is your responsibility what is done with the money, it isn't mine."

[fol. 8] Testimony of Homer N. Davis at the Trial

(Tr. 118-119)

By Mr. Goldschein:

Q. Now, will you tell the Court what Mr. Knight told you on April 8, 1942, with reference to the conference he had with Mr. Michael and Mr. Reifsnyder with reference

to the Maxi Manufacturing Company acquiring the Central Forging Company?

A. Mr. Knight told me that previously that day he had had a call at his office by Donald Reifsnyder and Robert Michael. I don't remember the entire conversation but I do remember that he told me that during their visit they had proposed to him a scheme, we will call it—you have—that certain assets of the Central Forging Company be reduced by $3,000 and that this $3,000 should be paid over to them through some third party.

(Tr. 119)

Q. Now, did you subsequently receive a letter from Mr. Knight with reference to that so-called scheme?

A. I received a letter on the 10th of April 1942.

Q. Have you got that letter, Mr. Davis?

A. No.

Q. Where is that letter?

A. Well, I received that letter on the 10th of April, and to the best of my knowledge I handed it to George L. Fenner, who called at our office that day.

[fol. 9] (Tr. 120)

Q. Have you been able to locate it?

A. I have not.

Q. I ask you to look at Government's Exhibit No. 2 and ask you to read that letter and see whether or not you can identify it.

A. Do you want me to read it out loud?

The Court: Read it to yourself.

Q. Read it to yourself.

A. That is a copy of the letter I received.

Q. It is a copy of a letter that you received from Mr. Knight?

A. Yes, sir.

(Tr. 120-121)

Q. Will you tell this Court the conversation that you had with Mr. Michael on the 10th day of April, 1942?

A. Mr. Michael asked me if he could see me confidentially; I said yes. We went to an adjoining room. In that room he said that he would have to have some additional money; I think his words were "A large amount of money." I questioned him at the time about the $3,000 that I had learned about through this letter, asking him if that was the money referred to, and he said no, this would be in addition to that. I asked him what the amount would be and he said $2,000. I asked him what it was to be used for and his reply was that in cases of the kind that we were in it was necessary to spread a little oil. I agreed—I mean I—[fol. 10] at the time I didn't think I had any choice in the matter—I will give you my feelings at the time if you would like to hear them.

Q. Tell us what was said.

A. I remember asking him if I should write him a check for it, and he said no, he didn't want a check for it. I said, "Well, how am I to give you this money?" He said he would have to have it in cash. I asked him what method we would use to get it and he said that it should be written on several cash checks and suggested that I enlist the help of Max Long in that two checks were to be written, one payable to me and one payable to Max.

I said I thought I could get Max Long to agree to it and that's the way it was done. I wrote the checks while he was there.

(Tr. 122)

The Court: One question. Am I to understand that at the time this proposal was made to you you were acting as the bookkeeper of the debtor's estate, the Central Forging Company?

The Witness: That's right.

The Court: You were handling the bookkeeping for Mr. Michael?

The Witness: Bookkeeping and purchasing. I had no position in the company other than as an employee.

[fol. 11] (Tr. 126)

Q. All right. What did he say about how he was going to handle the checks?

A. He said he would take them along to Scranton with him and have Mr. John Crolly countersign them.

Q. Did he say whether or not John Crolly would countersign them?

A. He said yes, he would countersign them.

Q. Did you ask him whether Mr. Crolly would know what it was about?

Mr. Coar: We object to that as leading.

The Court: No, I will allow it.

A. He told me that he could get John Crolly to sign them because he didn't believe John Crolly would know what he was signing.

. . . . . .

(Tr. 127-128)

Q. When was the next time you heard from Mr. Michael with reference to the checks?

A. The 16th of April, in the evening.

Mr. Coar: Will you keep your voice up, please?

A. The 16th of April in the evening; after dinner.

Q. Now, where did you talk with him?

A. On the telephone at my home.

Q. Did you call him or did he call you?

A. He called me.

Q. And what did he say to you over the telephone?

A. He told me he would be unable to come down the following day, but that he was sending the checks that I had given him by messenger.

Q. And did he say anything further?

A. Did he say anything further? That I can't recall.

Q. Did he say what you were to do with the checks?

A. No, not on the phone.

Q. All right. Did he send the checks up by messenger?

A. Yes.

[fol. 12] Q. The next day?

A. Yes. I will put it this way: There was a messenger with the checks there the next morning.

Q. All right. What did you do with the checks when the messenger brought them?

A. The one that was made payable to F. Max Long I took to him and secured his endorsement. The balance of them I took down to the Catawissa National Bank.

Q. What did you do with the messenger?

A. Well, I didn't do anything with the messenger.

Q. Who was the messenger, do you know?

A. It was a lady; I don't know.

Q. Did the messenger wait in the office while you cashed the checks?

A. No, she drove a car down to the Catawissa National Bank and stayed in the car.

Q. And did you get the checks cashed?

A. I did.

Q. What did you do after you got them cashed?

. . . . . .

(Tr. 129)

Q. Now, will you look at these checks, Mr. Davis, marked Government Exhibits Nos. 5-B, 5-C, 5-D, 5-E and 5-F, and tell us whether you can identify these checks.

A. Yes, I do.

Q. Are these the checks that you wrote out on the 10th day of April 1942?

A. They are.

Q. Upon whose instruction did you write these checks out?

A. Robert Michael.

[fol. 13] Q. Are these the checks that you say you gave to Mr. Michael to take along with him?

A. I did.

Q. Totaling approximately how much money?

Mr. Coar: The papers would speak for themselves, I think, your Honor.

The Court: Well, what do they total?

Mr. Goldschein: $2200, may it please your Honor. I offer these in evidence.

. . . . . .

(Tr. 130-131)

The Court: Mr. Davis, after the checks were delivered to Mr. Michael, am I to understand that you did not see

them again until they were delivered to you by this messenger on April 16th?

The Witness: That is right.

The Court: And when you received them on April 16th were they then signed in the name of Robert Michael and endorsed in the name of Mr. Crolly? Is that right?

The Witness: They were.

The Court: In summarizing your testimony as I understand it, you together with the messenger, a lady, went to the bank. She remained in the car and you cashed the checks, is that right?

The Witness: That's right.

[fol. 14] The Court: All right. Now, when you returned to the car what, if anything, did you do with the cash?

The Witness: We were just coming to that, I believe. I was to retain a hundred dollars for myself and Max Long was to retain a hundred dollars for himself in order to take care of any income tax which might be added to our regular income tax through these checks. I removed the two one hundred dollar bills, keeping one myself and——

Mr. Coar: I am sorry, your Honor, he is facing you and I can't hear him.

The Court: He retained two one hundred dollar bills, keeping one for himself—and what did you do with the other?

The Witness: I gave the other to Max Long.

* * * * * * *

(Tr. 134)

Q. Now, when you got this money at the bank what did you do with it?

A. I gave $2,000 of it to the messenger.

Q. Did you count it out to her?

A. I did.

Q. Where?

A. In the car.

Q. And then what did you do? Just give it to her in cash or put it in an envelope or what?

A. It was in an envelope; I sealed the envelope and told her to be careful that nobody held her up, and I got out [fol. 15] of the car and left for the Central Forging Company.

* * * * * * * *

(Tr. 136)

Q. Did you give Max Long the hundred dollars?

A. I did.

Q. To pay the income tax.

. . . . . .

(Tr. 145-146)

Q. Now, on the 24th day of April 1942, Mr. Davis, did you go to Mr. Knight's office?

A. I did.

Q. Who else was there at the time you were there?

A. Donald Reifsnyder, Robert Michael, Harry Knight and George Fenner, F. Max Long and myself.

Q. What did you go there for? What was the purpose of the meeting?

A. To write the checks that would eventually purchase the assets of the Central Forging Company.

. . . . . .

(Tr. 153)

Q. You made out a check, you said, to Mr. George L. Fenner?

A. I did.

Q. What was the sum of that check?

A. $3,000, as I remember it.

Q. What was the purpose of that check?

A. That check was drawn in accordance with the letter that I received from Mr. Knight that I just identified this morning.

. . . . . .

[fol. 16] (Tr. 155)

Q. Now, Mr. Davis, was anything said, any conversation with reference to this $3,000, at the table there by Mr. Michael, Mr. Reifsnyder, Mr. Fenner and Mr. Knight and you when you were writing this check with reference to $3,000?

A. As I remember it Mr. Fenner objected again to the scheme, said that he didn't like it and wished that it could be done some other way.

Q. Was any response made to that by anybody?

A. I think he got a response both from Donald Reifsnyder and by Michael.

Q. What did Mr. Michael say?

A. As I remember it he said that it was perfectly all right, that the ones in the room were the only ones that would ever know about it.

. . . . . .

(Tr. 156)

Q. Was anything said by anybody at that time in the office as to whether or not the $3,000 check to Fenner was costing the Maxi Manufacturing Company any additional money?

. . . . . .

(Tr. 157)

A. There was a remark; I think it was in connection with Robert Michael's statement that nobody would ever find out about it, he said that since the assets of the company had been reduced by $3,000 the Maxi Company would have no loss.

. . . . . .

[fol. 17] (Tr. 158-159)

. . . . . .

Q. Just tell what happened in the directors' room with reference to the money.

A. During the time that we were in the directors' room the $3,000 was cashed in the bank; I am unable to say who brought it into the directors' room, that is the cash, but it was laid on the table.

Q. Now,——

A. (Continuing) And it was received, counted and received by Robert Michael and Donald Reifsnyder. Which one received it I am unable to say.

Mr. Coar: May I ask to have the last answer repeated by the stenographer?

(The Reporter read the last answer.)

Q. Now, do you recall whether or not the money was received loosely in bills or in binders—packages?

A. I believe that it was packed because it was not in one package.

The Court: By "packed," do you mean that the bills were in the usual bank wrappers?

The Witness: I would imagine so. I didn't examine them very closely at the time.

. . . . . .

(Tr. 159)

Q. Now, were any telephone calls made in the office by anybody?

A. There was.

Q. By whom?

A. Donald Reifsnyder.

[fol. 18] Q. Do you know who he called?

A. I couldn't testify to that, although I heard him mention the name of Mr. Hervey Smith of Bloomsburg on the phone.

[fol. 18a] Testimony of F. Max Long at the Trial

(Tr. 212)

Q. Now, when was the first time that you discussed that check with anybody?

A. Two days or three days prior to the signing of that check Mr. Davis approached me asking me if I would be willing to sign a check in the amount of $600 as Mr. Michael needed additional funds to——

. . . . . .

(Tr. 214)

Q. How much did Mr. Davis say was required to close this deal?

A. I can't answer that; he asked me if I would sign a $600 check, $500—I was to retain $100 of that to pay income tax.

[fol. 19] Testimony of George L. Fenner, Sr. at the Trial

. . . . . .

(Tr. 240-241)

Q. Now, let me—will you look at Government Exhibit No. 2 and tell us whether or not the contents of that letter is familiar to you?

A. I have examined this copy of the letter, the Government exhibit from the file of H. S. K., August 31, 1944, both in the Grand Jury room and also in the office of the District Attorney, and I am familiar with its contents.

Q. Now, did you ever see the original of that letter?

A. Yes, the original of that letter was shown to me by Homer N. Davis on the evening of April 10, 1942. That date I fixed from a memorandum which I had in a book I kept of certain appointments.

Q. That is the letter from Mr. Knight to Mr. Davis dated April 9, 1942?

A. It is.

. . . . . .

(Tr. 242)

Q. Now, did you at any subsequent date agree to carry out the purpose or plan of this letter?

A. I did.

Q. Will you tell the Court when?

A. I can't remember when.

Q. Do you recall going to Sunbury on April 24, 1942?

A. I do.

Q. Will you tell the Court just who you went there with?

A. The memorandum in my day book shows I had made an appointment for nine o'clock to meet Mr. Don Reif-

(Tr. 242-243)

[fol. 20] snyder, and changed the date—or hour, from nine o'clock to eight-thirty. On that date Mr. Michael and Mr. Reifsnyder drove up to my home at about one of those hours in an automobile and I accompanied them to Catawissa.

Q. Now, will you tell the Court your conversation with Mr. Reifsnyder and Mr. Michael with reference to the business of the Central Forging Company?

A. Well, the trip was covered by a very general conversation that we kept going between the three of us during the period of that ride covering a number of different matters; Mr. Reifsnyder telling me of various things that he and Mr. Michael had done with reference to determining different information, or seeking different information in regard to the Central Forging Company affairs, giving the details of trips to various individuals and places of which I cannot give the exact idea. We also had conver-

sation at that time with reference to certain moneys, I believe in the amount of $500, that had to be—or was to be paid to Herbert Smith, an attorney in Bloomsburg, Pennsylvania.

Q. Now, tell us whether or not anything was said with reference to the $3,000 mentioned in the letter of Harry Knight to Davis on the 9th of April '42.

A. I remember Mr. Reifsnyder mentioning, in connection with that money, if it was to be paid through me that there should be an amount deducted that would represent some-
(Tr. 243-244)
[fol. 21] thing to be figured for income tax payment purposes. I and Mr. Reifsnyder talked somewhat about that but did not come to any definite amount on the occasion of that ride, as I recall.

Q. Now, where were you sitting in the car?

A. I was sitting in the back seat.

Q. Where was Mr. Reifsnyder and Mr. Michael sitting?

A. In the front seat.

Q. The front seat. Who was to pay the income tax on that $3,000?

A. I was.

Q. All right. Now, did you ever definitely fix a sum which you were to receive for the payment of the income tax on that money?

A. As I recall the conversation concerning it, that was continued at the office of Mr. Knight, a general conversation regarding it, and the amount was fixed at $500.

* * * * * * *

The Court: But you were to retain a sum sufficient to meet the income tax on such an amount added to your income tax return, is that right? In other words, you were to report the $3,000 on your income tax return as though you had actually received it, is that right?

The Witness: That's right.

The Court: And you were to be reimbursed in an amount sufficient to meet the tax on that amount?
(Tr. 244)
[fol. 22] The Witness: Yes, sir.

The Court: And that amount was arbitrarily fixed at $500?

The Witness: Yes, sir.

The Court: All right, go ahead.

(Tr. 246)

Q. Now, did you see a check made payable to you in the sum of $3,000?

A. I did.

Q. What did you do with that check?

A. I endorsed it there in Mr. Knight's office and left it there.

Q. Now, did you——

A. (Continuing) I mean by "left it there," I don't know who took it after I endorsed it.

Q. Now, did you get that $500 for payment of income tax?

A. I did.

Q. Where were you when you received it?

A. In the library of Mr. Knight's office.

Q. Who else was in that room?

A. Mr. Michael and Mr. Reifsnyder.

Q. Now, will you tell us what occurred there?

A. Well, Mr. Reifsnyder handed me $500.

Q. Where was Mr. Michael when he handed you the $500?

A. I think he was standing looking on.

[fol. 23] (Tr. 247-248)

Q. Where did you go from Mr. Knight's office?

A. We went to the Catawissa National Bank in Catawissa.

Q. Where in the bank did you go?

A. Well, we entered the bank and we went into the directors' room of the bank.

Q. Now, who else was there with you?

A. Mr. Davis, Mr. Reifsnyder, Mr. Michael, and myself, and then we were joined by Mr. Unangst, the cashier of the bank.

Q. Was the $3,000 check cashed on that day, do you know?

A. The $3,000 was brought in by Mr. Unangst, which I took to represent the proceeds of that check.

Q. What did he do with the $3,000?

A. He put it on the directors' table.

Q. And then what happened to it?

A. As I recall, Mr. Reifsnyder and Mr. Michael both joined in the counting of the bills that were laid on the table.

Q. Now, how was the money, was it wrapped or loose?

A. It was wrapped, in wrappers.

Q. You mean those narrow strips that go around to hold them together?

A. Yes.

Q. Do you know how many bundles were there?

A. To the best of my recollection there were six bundles.

Q. Now, after they counted the money what was done

[fol. 24] (Tr. 248-249)

with it, what happened to it?

A. Mr. Reifsnyder, as I recall, took $500, put it into his pants pocket and Mr. Michael took the rest of the money.

Q. Did anybody make any telephone calls in that room that afternoon?

A. Yes, Mr. Reifsnyder made a telephone call.

Q. Did he talk loud enough for everybody in the room to hear?

A. Well, I heard him.

Q. What did he say over the telephone?

A. Well, he turned to the group there and said that Mr. Smith was not in his office, he was on the golf course.

Q. All right. Was anything else said?

A. You mean by——

Q. Did you have any conversation with Mr. Reifsnyder or Michael with reference to the $3,000?

A. No, not at that time, no, sir.

Q. Were you asked whether or not you thought the $3,000 deal was satisfactory to you or not?

Mr. Coar: We object to that, if the Court please.

The Court: It depends by whom it was asked.

Mr. Goldschein: The question is——

The Court: Did anybody ask you whether you objected to the transaction?

The Witness: I might have made some protest about it but nobody asked me about it.

[fol. 25] (Tr. 249-250)

Q. Will you tell this Court whether or not you ever made a protest in Mr. Michael's presence, in his hearing?

A. Yes, I believe I did on that particular occasion, I made a protest that I didn't like to be made the intermediary for that transaction.

Q. Now, was there any response from anybody with reference to that?

A. Mr. Michael said, "Well, this will probably never be known to anybody but us who are here."

Q. When was that said, do you recall? Where?

A. In the Catawissa National Bank.

Q. Catawissa National Bank. Now, after Mr. Reifsnyder made this telephone call what happened?

A. Well, shortly after Mr. Reifsnyder, Mr. Michael and myself got in the automobile in which we had come down to Catawissa and drove out to the Bloomsburg Country Club.

Q. All right. What took place at the Bloomsburg Country Club?

A. We went along a road that either skirts along the side or through the club and Mr. Reifsnyder made a remark about, "There he is." The car was stopped and Mr. Reifsnyder and Mr. Michael got out of the car.

Q. Who were they talking about when they said, "There he is," do you know?

A. Mr. Herbert Smith.

[fol. 26] (Tr. 251)

Q. Now, did you see what transpired after they left the automobile?

A. No. I saw them walk away from the automobile and I did not see what transpired.

Q. And after you left the golf course where did you go?

A. We drove towards Wilkes-Barre, where they left me off from the automobile.

(Tr. 271)

Q. Mr. Fenner, will you be good enough, please, if you can, to fix the date or the time, rather, as nearly as you can when you arrived at the bank in Catawissa on the 24th of April 1942?

A. Yes. I know it was very near the closing time of the bank, it was crowding three o'clock very, very much.

Q. Was three o'clock the closing time for the Catawissa bank in April 1942?

A. As I was informed, yes.

Q. But you got in there before it closed?

A. Just before it closed.

[fol. 27] Testimony of Hervey Smith

(Tr. 277)

Q. Did you ever have any conference with Mr. Michael, trustee of the Central Forging Company?

A. I did.

Q. Will you tell this Court approximately when it was that you had a conversation with him?

A. I think the first time I met him was in my office in Bloomsburg in the latter part of January 1942.

Q. And with whom?

A. Donald Reifsnyder.

(Tr. 277-278)

Q. Did you have any subsequent conversations with them with reference to the Central Forging Company?

A. Yes, they called at my office some time during the middle part of February, as near as I can figure it from my correspondence and papers, and at that time they put a proposal to me with respect to the settlement of the affairs of the Central Forging Company.

The Court: Well, by "them," you mean whom?

Q. Who is that?

A. By "them," I mean Donald Reifsnyder and Mr. Michael.

[fol. 28] (Tr. 278)

Q. Was any proposal made to you at that time to get your clients to agree?

A. Yes. They proposed to me that I be given $500 to induce my clients to go along with this settlement.

Q. Now, who made the proposal?
A. Donald Reifsnyder made the proposal.

(Tr. 281-282)

Q. Can you tell us whether or not you saw Donald Reifsnyder and Robert Michael on April 24, 1942?
A. Yes, I saw them on the golf course of the Bloomsburg Country Club.
Q. What was said? How did they come to the golf course, do you know?
A. I noticed them—I was playing a golf match and I was out near the center of the course and I saw them coming across one of the other fairways toward me. As soon as I recognized them why I went over to meet them.
Q. All right.
A. At that point they—Donald Reifsnyder handed me the money in the presence of Mr. Michael.

[fol. 29] (Tr. 282)

Q. Now, how much did he give you?
A. $500.

The Court: Cash?
The Witness: $500 cash.
The Court: Cash. All right.

Q. What was that $500 for?
A. Well, the original intention it was given to me for—it was offered to me, he thought I would induce the Becklys to accept the settlement.

[fol. 30] March Term 1944 Grand Jury

(Tr. 371-372)

Mr. Goldschein:

I would like the particular entry be made as a part of the record that the Grand Jury transcript that has been offered in evidence here is the evidence adduced before the Federal Grand Jury sitting here at Scranton, beginning at the March term beginning April 6th.

The Court: Any questions about it, Mr. Coar?

Mr. Coar: It is my recollection, your Honor, when that paper was identified——

The Court: The answer is yes or no. Is there any question about the authenticity of that record being the transcript of the testimony taken before the Grand Jury empaneled in the Middle District of Pennsylvania?

Mr. Coar: There is no question on the part of the respondent that the paper submitted here is an accurate transcript of the shorthand notes taken by two young ladies before a Grand Jury sitting in Scranton.

The Court: What is the Term?

Mr. Goldschein: March Term, Federal Grand Jury—at the March Term, 1944.

Mr. Coar: Are you sure that is the March Term, '44?

[fol. 31] (Tr. 372). Are you sure it was the March Term?

Mr. Goldschein: The March Term, Grand Jury, 1944.

[fol. 32] SENTENCE OF COURT

(Tr. 372-373)

The Court: After careful consideration of the testimony offered here by the Government, and after equal study and consideration of the testimony of Robert Michael before the Grand Jury, the Court is convinced beyond a reasonable doubt that said Robert Michael is guilty of contempt. There were in the record two particularly pertinent and outstanding transactions; one concerning a check in the amount of $3,000 made payable to George Fenner, the other a series of checks, consisting of five, one payable to Homer Davis, the other payable to Max Long, three payable to cash, all drawn on the same date. This Court is convinced that the testimony of Robert Michael with reference to these transactions was wilfully and deliberately false and was given with the wilful and deliberate intent to obstruct the Grand Jury in its inquiry, and this Court in the due administration of justice.

Let the prisoner be arraigned at the bar, the Court is ready to impose sentence.

(Tr. 377)

The Court: It is the sentence of the Court that the respondent Robert Michael be committed to an institution to

[fol. 33] (Tr. 377)

be designated by the Attorney General, as required by statute, for a period of six months.

[fol. 34] Gov't. Exhibit G-2

Copy

G. J. Ex. 8—Harry Knight, Sept. 5, 1944 RA

From files of HSK, Aug. 31, 1944

April 9, 1942.

Mr. Homer Davis, Catawissa, Pa.

Dear Homer:

This is to remind you to have printed the debentures on the form which I submitted to you, and which as I recollect it you took with you.

Last evening about 8 o'clock Don Reifsnyder called at my home. He said that he and Mr. Michaels had had dinner in Sunbury, had talked over in detail the problem which we discussed here for an hour or two about getting the extra money, and made a suggestion that it be paid to a lawyer whom he designated who would render a bill to the Maxi Company, namely that the Maxi Company now pay to the Trustee $22,082 being $3,000 less than the amount we calculated and then later on pay the $3000 to a lawyer to be designated by Don who would render a bill and they would arrange them to get this $3000.

I was not impressed with carrying out this purpose through a stranger who had no occasion to do business for your plant, and knew none of you, never had been at the plant and never saw any of the parties. I suggested to Don that we would endeavor to protect him and that personally I would like to see it done through Mr. Fenner or young George Fenner; that in any event he would be perfectly justified in giving us a reduction of 15% on the

receivable, especially in light of the fact that we were required to place at least one account, and probably more, in the hands of an attorney, and even if we collect it, it would cost us the 15% collection fees. 15% of the receivables taken over January 1 amounts to about $3500. It was then arranged that he would write me a letter stating that they could not agree to the deduction of 15% which would amount to about $3500 but they would agree to a flat deduction of $3000 and make the price $22,982.00 plus some odd cents, and that we would endeavor to make some arrangements through Mr. Fenner to work out a plan satisfactory.

I told him I could not talk to Fenner between now and the 17th because I was leaving today and would not be back until the night of the 15th at least.

If you feel that you can explain this to Mr. Fenner I would be very glad to have you take it up with him, and I will explain it more in detail when I get back, and am able to see him. If you feel it would be better for me to take it up in the first instance, you can let it go until I return.

Very truly yours,

[fol. 35] GOVT. EXHIBIT G-3

Copy

G. J. Ex. 7—Harry Knight, Sept. 5, 1944 RA

From files of HSK, Aug. 31, 1944

Stark, Bissell and Reifsnyder, Attorneys and Counselors at Law, Twelfth Floor Scranton National Bank Building, Scranton, Pa. Phone 2-3211

April 9, 1942.

Lee P. Stark, William A. Bissell, Don Reifsnyder, Harry S. Knight, Esq., Sunbury Trust & Safe Deposit Bldg., Sunbury, Pa.

Re: Central Forging Company

DEAR MR. KNIGHT:

To confirm our discussion in your office yesterday, I hereby give you the Trustee's answer to the questions raised.

According to our original understanding, the Maxie Company was to take over the assets of the Central Forging Company for a total of $43,754.33 less certain deductions. From this amount there is an immediate deduction of $17,000.00 which is utilized exclusively for the payment of 20% to bondholders and 5% to unsecured creditors leaving a balance of $26,754.33. From this is deducted $421.50, being the expenditures set forth in your letter of February 26th to me. This leaves $26,332.83. From this amount there is another proper deduction of $350.00 being the bookkeeping figure of Salesmen's advances which are uncollectible by either the Maxie Company, the Trustee, or anyone else. This leaves $25,983.83. and includes the amount to be paid by Maxie for everything including the accounts receivable.

Mr. Michael and I have gone over the history which you exhibit in connection with your attempts to collect these accounts receivable. It is perfectly clear that you will not collect all of them and the question that we tried to thrash out was what amount should be deducted from the figure last named to reflect the amount that you will not be able to collect.

The total amount of the accounts receivable is $23,534.50. It seems that we could debate this question for a long time and not come to any agreement. Your request to be allowed 20% seems to Mr. Michael and me to be too much, as that would amount to more than $4600.00. I have checked into other cases and note that 20% has been allowed for shrinkage in accounts receivable, but we don't feel that full amount should be allowed.

To compromise the situation, I suggest that a flat allowance of $3,000.00 is proper. Consequently we deducted $3,000.00 from the figure of $25,982.83, leaving the amount to be turned over to the Trustee for Administration expenses at $22,982.83. It is, of course, my understanding that the $17,000 for creditors claims is in the hands of Mr Unangst the Escrow Agent.

I shall assume that this arrangement is satisfactory in accordance with my understanding with you at your home last evening.

Yours very truly, /s/ Don Reifsnyder

JDR:KB

FRONT

GOVT. EXHIBIT G-5a

CATAWISSA NATIONAL BANK
Catawissa, Pa.

60-941 No. A 680

Catawissa, Pa. April 10, 1942

PAY TO THE ORDER OF F. Max Long $600 00/100 Dollars

The Central Forging Co. 600 Dols 00 cts

In the District Court of the U.S. for the Middle District of Penna. In Matter of

Acct. #125 CENTRAL FORGING CO. Debtor. No. 9822 In Bankruptcy

Robt. Michael
Trustee in Reorganization Proceedings

Countersigned
J. W. Crolly
Referee in Bankruptcy as
Special Master

BACK

GOVT. EXHIBIT G-5a

Max Long

O J Ex B - Robert Michael R A

August 30, 1944

PAID.
4 41742
60 1941

FRONT

GOVT. EXHIBIT G-5b

CATAWISSA NATIONAL BANK
Catawissa, Pa.

60-941 No. A 681

Catawissa, Pa. April 10, 1942

PAY TO THE ORDER OF H. N. Davis $600 00/100

The Central Forging Co. 600 Dols 00 cts Dollars

In the District Court of the U.S. for the Middle District of Penna. In Matter of

Acct. #125 CENTRAL FORGING CO. Debtor. No. 9822 In Bankruptcy

Robt. Michael
Trustee in Reorganization Proceedings

J. W. Crolly
Referee in Bankruptcy as Special Master

Countersigned

BACK

GOVT. EXHIBIT G-5b

H. N. Davis

O J Ex A — Robert Michael Aug. 30, 1944 R A

⑆41742⑆ 609941 PAID

FRONT

GOVT. EXHIBIT G-5c

CATAWISSA NATIONAL BANK
Catawissa, Pa.

60-941 No. A 679

Catawissa, Pa. April 10, 1942

PAY TO THE ORDER OF Cash $450 00

The Central Forging Co. 450 Dols 00 cts 100 Dollars

In the District Court of the U.S. for the Middle District of Penna. In Matter of

Acct. #79 CENTRAL FORGING CO. Debtor. No.9822 In Bankruptcy

Robt. Michael
Trustee in Reorganization Proceedings

Countersigned
J. M. Crolly
Referee in Bankruptcy as
Special Master

BACK

GOVT. EXHIBIT G-5c

H. N. Davis
O J Ex O - Robt. Michael
Aug. 30, 1944 R.A.

PAID
41742
60941

FRONT

GOVT. EXHIBIT C-8e

Countersigned J. W. Crelly
Referee in Bankruptcy as Special Master

CATAWISSA NATIONAL BANK
Catawissa, Pa.

60-941 No. A 676

Catawissa, Pa. April 10, 1942

PAY TO THE ORDER OF Cash $250 00/100

The Central Forging Co. 250 Dols 00 cts Dollars

In the District Court of the U.S. for the Middle District of Penna. In Matter of

Acct. #125 CENTRAL FORGING CO. Debtor. No. 9822 In Bankruptcy.

Robt. Michael
Trustee in Reorganization Proceedings

BACK

GOVT. EXHIBIT C-8e

H. N. Davis

O J Ex C - Robt. Michael
Aug. 30, 1944 R.A.

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60-941

FRONT

GOVT. EXHIBIT G-5f

CATAWISSA NATIONAL BANK
Catawissa, Pa.

60-941 No. A 678

Catawissa, Pa. April 10, 1942

PAY TO THE ORDER OF Cash $300 00/100

The Central Forging Co. 300 Dols 00 cts Dollars

In the District Court of the U.S. for the Middle District of Penna. In Matter of

Acct. # 74. CENTRAL FORGING CO. Debtor. No. 9822 In Bankruptcy.

Robt. Michael
Trustee in Reorganization Proceedings

Countersigned
J. W. Crolly
Referee in Bankruptcy as
Special Master

BACK

GOVT. EXHIBIT G-5f

H. N. Davis
O J Ex E - Robt. Michael
Aug. 30, 1944 R A

PAID
4174
9-41
600

FRONT

GOVT. EXHIBIT G-6b

This check is in settlement of the following invoices		
Date	:	Amount
	:	
	:	
	:	
	:	
	:	
	:	
Total of Invoices		
Less __% Discount		
Less	:	
Total Deductions		
Amount of Check		3000

If Incorrect please return. No receipt Necessary.

MAXI MANUFACTURING COMPANY No. A1666

Catawissa, Pa. April 24 1942

Pay to the order of Geo. L. Fenner $3000 00

Three thousand and 00/100 Dollars

Maxi Manufacturing Company

CATAWISSA NATIONAL BANK E. Max Long
President

60-641 Catawissa, Pa. H. E. Davis
Treasurer

BACK

GOVT. EXHIBIT G-6b

Geo. L. Fenner

PAID
4-25-42
601941

8-31-44

H. M.

Homer M. Davis

O. J. Ka A.

[fol. 42] Copy

GOVT. EXHIBIT G-11

In the District Court of the United States for the Middle District of Pennsylvania

No. 9822 Proceedings for Reorganization of a Corporation

In the Matter of CENTRAL FORGING COMPANY, Debtor

Order Appointing Trustee

And Now, December 27, 1941, it is ordered that Robert Michael, Clarks Summit, Pennsylvania, is hereby appointed trustee of the above debtor corporation, to fill the vacancy caused by the resignation of Walter H. Compton, Esquire, this appointment to be effective January 1, 1942.

It is further ordered that the said Robert Michael shall have the same powers and duties as the former trustee has had, and he shall provide bond in like amount.

Albert W. Johnson (S.), United States District Judge.

[fol. 43]. Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 44] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8734

In the Matter of the Grand Jury Witness ROBERT MICHAEL

Present: Jones, Goodrich and McLaughlin, Circuit Judges.

ORDER ADMITTING APPELLANT TO BAIL, ETC.—Filed October 2, 1944

And Now, October 2, 1944, upon motion of counsel for the appellant and after hearing and consideration it is Ordered that the appellant Robert Michael be admitted to bail pending the determination of his appeal, bail to be in the sum of $3,000.00 with sufficient surety and to be approved by the Circuit Court of Appeals and entered in the

United States District Court for the Middle District of Pennsylvania.

It is Further Ordered that the Clerk forthwith certify a copy of this Order to the Clerk of the United States District Court for the Middle District of Pennsylvania.

It is Further Ordered that the appellant have twenty days from this date to file and serve his brief and that the United States of America, appellee have fifteen days thereafter to file its brief; and that the above entitled cause be set for argument before this Court on Monday November 6, 1944.

By the Court. Jones, Circuit Judge.

[File endorsement omitted.]

[fol. 45] In United States Circuit Court of Appeals

[Title omitted]

Order Assigning Hon. J. Cullen Ganey for Argument—Filed November 6, 1944

Appeal from the District Court of the United States for the Middle District of Pennsylvania

And now, to-wit: this 6th day of November A. D. 1944, it is ordered that Hon. J. Cullen Ganey, District Judge, for the Eastern District of Pennsylvania, be, and he is hereby assigned to sit in above case in order to make a full court.

Goodrich, Circuit Judge.

[File endorsement omitted.]

[fol. 46] In United States Circuit Court of Appeals

[Title omitted]

Minute Entry

And afterwards, to wit, the 6th day of November, 1944, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs,

before the Honorable Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and Honorable J. Cullen Ganey, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 16th day of December, 1944, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 47] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT

No. 8734

In the Matter of ROBERT MICHAEL

Upon Appeal from a Judgment of Contempt of the United States District Court for the Middle District of Pennsylvania.

Before Goodrich and McLaughlin, Circuit Judges and Ganey, District Judge

OPINION OF THE COURT—Filed December 16, 1944

By GOODRICH, Circuit Judge.

Robert Michael was convicted of criminal contempt in the United States District Court for the Middle District of Pennsylvania. He appeals. The foundation of the discussion of both his rights and liabilities is, of course, the statute, Section 268 of the Judicial Code (28 U. S. C. A. § 385) which provides as follows:

> "The . . . courts [of the United States] shall have power . . . to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice . . ."

The argument for the appellant makes several points, some of which may be disposed of briefly before passing to the one which requires more elaborate consideration. The

[fol. 48] first place, he says, alleged acts which constitute the contempt took place in the grand jury room where the judge was not and could not lawfully be present. This, he says, was not in the presence of the court or so near thereto to come within the statute. This point is directly settled to the contrary by this Court in Camarota v. United States, 111 F. (2d) 243, 246 (1940), cert. den., 311 U. S. 651 (1940), where the Court said: "Since the grand jury is an arm of the district court, proceedings before it are to be regarded as being proceedings in the court."

Point is made of the fact that there was no formal presentment by the grand jury nor was there a sworn petition by the attorney for the United States. What happened was that with the grand jury present in the court room[1] the attorney for the United States, stating that he was acting at the direction of the grand jury, complained of the appellant, and petitioned the court to hold him guilty of contempt. An order to show cause was issued by the court, a copy of the petition and order handed to the defendant's counsel and two days later copy of the transcript of the testimony of the appellant as a witness before the grand jury was furnished him. Full hearing was had upon the petition and defendant's answer thereto. The judgment of the court followed.

We think the defendant has nothing of which to complain because of the procedure followed. The power to punish for contempt in the presence of the court is not controlled by the limitations of the Constitution as to modes of accusation and methods of trial. Ex Parte Hudgings, 249 U. S. 378, 383 (1919). While due process requires that the accused should know the charges and have reasonable opportunity to meet them, the proceedings are not required to take any particular form "so long as the substantial rights of the accused are preserved." [fol. 49] Camarota v. United States, supra. We think they were clearly so preserved in this case.

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[1] This fact was stated in the record for appeal by the trial judge over the objection of the defendant. Defendant makes the further point that it does not appear that the members of the grand jury were in the court room in their capacity as grand jurors rather than spectators. We think there is no substance in the argument.

The appellant also complains that the judgment does not recite that the court found him guilty beyond a reasonable doubt.[2] The judge did make a statement of such finding in open court; but the argument is that the judgment, itself, is what controls, not the oral explanation or comment which accompanied it. Counsel for the United States answers that the finding of guilt beyond reasonable doubt does not need to be included in the judge's order any more than such a finding needs to be included in a jury's verdict. It is the standard by which the evidence leading to or sustaining a conviction must be measured. It does not have to be formally written into either. We think the government's position is sound and in the absence of conclusive authority to the contrary, none of which has been cited, we adopt it.

It is also alleged as error that certain letters and accounts of certain conversations were admitted, letters not to or from the appellant and conversations not in his presence. We find nothing in the court's action here which results in prejudice to the accused. The trial judge accepted the evidence so that he could get the whole picture and we have every confidence in his ability and desire to weed out the relevant from the irrelevant when it came to determining the weighing of the testimony against the accused.

This brings us, then, to the difficult point in the case. Here we pass from allegations of mere irregularities to the difficult question of whether this appellant could properly be convicted of contempt as a result of what he did. He was not contumacious or obstreperous. He did not refuse to answer questions. His testimony cannot fairly be characterized as unresponsive in failing to give direct answers to the questions asked him.

Counsel for the appellant has analyzed the evidence and presented arguments why certain witnesses should not [fol. 50] be believed and why the appellant should be believed. This line of argument we cannot go into, for it is not our function. We do not pass on the credibility of the witnesses. In our minds it is clear that there is testimony upon which the trier of the facts could reasonably

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[2] It is not disputed that this is the test which must be met. Blim v. United States, 68 F. (2d) 484 (C. C. A. 7, 1934).

have found that Michael was not telling the truth in the answers he gave to some of the questions propounded by the attorney for the United States. The questions were relevant to the subject then under examination which was an inquiry into the matters concerning the settlement of the affairs of the Central Forging Company, a corporation which had been in reorganization proceedings in the District Court for the Middle District of Pennsylvania. So here we have a witness who is asked questions relevant to an inquiry and he gives answers which may be and have been found to be untrue. For the purpose of the remainder of this discussion we shall assume the answers are untrue and that the accused might have been found guilty of perjury. May he likewise be found guilty of contempt of court and summarily punished accordingly or is he subject to prosecution for perjury only, in which he would be entitled to the Constitutional protection of trial by jury?

As Mr. Justice Cardozo said in Clark v. United States, 289 U. S. 1, 11 (1933) "The books propound the question whether perjury is contempt, and answer it with nice distinctions."[3] He cites Ex Parte Hudgings, supra, for the proposition that "Perjury by a witness has been thought to be not enough where the obstruction to judicial power is only that inherent in the wrong of testifying falsely." On the other hand, as he points out "obstruction to judicial power will not lose the quality of contempt though one of its aggravations be the commission of perjury."[4]

[fol. 51] As pointed out by the court in United States v. Arbuckle, 48 F. Supp. 537 (D. C. D. C., 1943) in every perjury case the false testimony tends to obstruct justice. It imposes burdens on court and counsel and its refutation takes time and expense. But this inherent obstructive effect of perjury is not sufficient to constitute the additional obstruction required to make a false witness also guilty of

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[3] The decisions, both state and federal, which have dealt with the question are collected and classified in Notes, 11 A. L. R. 342 and 73 A. L. R. 817.

[4] In that case the accused by means of false swearing and concealment had accomplished her acceptance as a juror and the court points out that there is a distinction, not to be ignored, in deceit by a witness and deceit by a talesman, since a talesman when accepted as a juror becomes a part of the court.

contempt. Judge Laws, in the case just cited, concludes that the requirement is that the perjury shall block the inquiry. If it does then it is obstruction. By "block the inquiry," is obviously not meant effectively to block the inquiry, because if the blocking was completely effective the truth would not be found out and the perjury not discovered. It is sufficient if it tends to block the inquiry or blocks it so far as a particular witness is concerned even though, as in the case before us, what is determined to be the truth is discovered from other witnesses.

Blocking the inquiry can clearly take place by the speaking of words as well as by other acts. If a witness tears up a significant paper in the grand jury room he is blocking the inquiry by destroying evidence. If he refuses to answer he is doing it by failure to furnish evidence. If he denies knowledge of something which it is determined beyond a reasonable doubt that he does know about he is blocking the inquiry just as effectively by giving a false answer as refusing to give any at all.

It is not without significance, we think, that the majority of the federal cases dealing with perjured testimony as contempt have to do with litigation on the investigatory side of legal proceedings as contrasted with the trial of particular issues of fact. Bankruptcy cases are the most frequent and an imposing array of authorities hold defendants for contempt for false answers in the investigation of affairs of bankrupt estates.[5] False testimony in such [fol. 52] cases and false testimony before grand juries[6]

[5] In re Eskay, 122 F. (2d) 819 (C. C. A. 3, 1941); Schleier v. United States, 72 F. (2d) 414 (C. C. A. 2, 1934), cert. den. 293 U. S. 607 (1934); Haimsohn v. United States, 2 F. (2d) 441 (C. C. A. 6, 1924); In re Gitkin, 164 Fed. 71 (E. D. Pa. 1908).

[6] In re Meckley, 137 F. (2d) 310 (C. C. A. 3, 1943), cert. den. 320 U. S. 750 (1943); Schleier v. United States, 72 F. (2d) 414 (C. C. A. 2, 1934), cert. den. 293 U. S. 607 (1934); United States v. McGovern, 60 F. (2d) 880 (C. C. A. 2, 1932), cert. den. 287 U. S. 650 (1932); Blim v. United States, 68 F. (2d) 484 (C. C. A. 7, 1934); Lang v. United States, 55 F. (2d) 922 (C. C. A. 2, 1932), cert. dismissed 286 U. S. 523 (1932); O'Connell v. United States, 40 F. (2d) 201 (C. C. A. 2, 1930), cert. dismissed on stipulation 296 U. S. 667 (1930).

tends to block investigation at the start and those are the types of cases in which convictions for contempt must frequently appear in the federal decisions. The position of the false witness in cases like these is different in degree from a false denial by a witness in the trial of a fact issue as to the speed of a motor car or his whereabouts on a given day.

In the case at bar there are several places where the defendant gave testimony which, assuming its untruth, was of a type tending to block the inquiry. For instance, he was examined concerning a batch of checks executed by him as trustee in reorganization proceedings of a company. The reason the checks were given and what the money went for were critical points in establishing the principal transaction with regard to the winding up of the reorganization proceedings. The witness either denied knowledge of the checks or gave explanations which could be found to be untrue. False explanation was as obstructive as an attempt to destroy the checks would have been.

The point is not free from difficulty. We have considered it carefully with full recognition of the importance of the constitutional provision for a jury trial of a person charged with crime. Our conclusion is that the appellant's rights were not disregarded, that he could have not only been found guilty of giving untrue testimony but that such conduct on his part was an obstruction of the administration of justice and that he could be and was properly held liable in the contempt proceedings.

Affirmed.

[fol. 53] DISSENTING OPINION.

GANEY, *District Judge*, dissenting.

With the conclusion here reached by the majority, I dissent. With so much of the opinion as concerns the procedure complained of, and the admission of certain evidence, I am in agreement. I do not feel however that the evidence warranted the Trial Judge in holding the defendant in contempt of court.

The question here posed, while seemingly a simple one, has deeper implications and greater significance beyond the immediate case, for as a precedent, it will broaden the field of judicial power in criminal contempt cases beyond

its present limitations, and in so doing is portentous of a growing tendency through attrition to wear away the ancient instrument of fact finding—trial by jury.

It will serve no useful purpose to review the history of contempt cases in either England or this country. The power of committing individuals for criminal contempt in England though rather broad in its beginning, became gradualy narrower and more confining. Its exercise is best expressed by the great Master of the Rolls of the nineteenth century, Sir George Jessel, whose judgments have done so much to build up the fabric of the English law.*

In this country judicial authority to punish for contempts does not exempt it from constitutional limitations, since its only purpose is to secure it from obstruction in the performance of its duties, to the end that the means appropriate for the preservation and enforcement of the [fol. 54] Constitution may be secured. Toledo Newspaper Co. v. United States, 247 U. S. 402.

The power of the court to punish for contempt in "his presence or so near thereto, as to obstruct the administration of justice" extends to witnesses before a Grand Jury. O'Connell v. United States, 40 Fed. (2d) 201; United States v. McGovern, 60 Fed. (2) 880.

The function of a reviewing court in a case of this kind is precisely the same as in other cases of a criminal nature, that is to review questions of law. This includes, of course,

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* In re: Clements v. Erlanger, 46 L. J. (N. S.) (Eq.) 375, 383 (1877): "Therefore it seem to me that this jurisdiction of committing for contempt being practically unlimited should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of Judges to see whether there is no other mode which is not open to the object of arbitrariness and which can be brought to bear upon the subject. I say that a Judge should be most careful to see that the cause cannot be fairly prosecuted to a hearing unless this extreme mode of dealing with persons brought before him on accusations of contempt should be adopted. I have myself had on many occasions to consider this jurisdiction, and I have always thought that necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found . . ."

the question as to whether there is evidence which supports or tends to support the judgment of the Trial Court. United States v. Brown, 116 Fed. (2d) 455, 457.

Does the evidence in this case support the findings of the Trial Court? I think not. I agree with the findings of the majority that the defendant was not contumacious or obstreperous, that he did not refuse to answer questions, and further that his testimony cannot fairly be characterized as evasive in failing to give direct answers to the questions asked him, nor can it be said that his answers were not responsive. That he did not tell the truth in many instances, I am convinced. However, it is now well settled that a mere act of perjury on the part of a witness does not in and of itself, without something more, amount to contempt of court. Ex Parte Hudgings, 249 U. S. 378. The question in that case was whether the power to punish for contempt extended to every case where a court was of the opinion that a witness was committing perjury. The court there said, supra, 383: "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in every case where the power to punish for contempt is exerted—a principle which, applied to the subject in hand, exacts that in order to punish perjury in the presence of the court as a contempt there must be added to [fol. 55] the essential elements of perjury under the general law the further element of obstruction to the court in the performance of its duty. As illustrative of this, see United States v. Appeal, 211 Fed. Rep. 495."

It can be seen from this that it is not every obstruction to judicial power, which is punishable by contempt, for perjury, which is the telling of an untruth, under oath, with respect to any material matter, (18 U. S. C. A. 231) of necessity must be an obstruction in some degree since by its very definition, it is the telling of a falsehood with respect to a material issue involved in the case. What additional element must be present then besides perjury in order to hold a witness in contempt of court? It seems to me, from an analysis of the cases, that the answers to the question or questions propounded to the witness, must have tendency to block the inquiry or to hinder the power and duty of the court in the performance of their functions. That this does

not admit of precise definition is obvious. However, precedent has pointed up the essential requisites. It seems to me the answers to the questions by the witness must have a tendency to mislead the court with respect to a material isue, by artful attempts at evasion; or a stalling of the court's inquiry by a palpable failing of memory concerning events of importance through repeated resort to "I do not remember"; or by destruction by the witness of books and papers material to the issue; or by conduct which is obstreperous or contumacious; or by answers no less, though responsive are yet wily and ambiguous and which by innuendo or indirection tend to shunt the focus of the inquiry. Clearly, it seems to me, none of these factors obtain in the instant case.

Some reliance is had by the majority on the fact that the witness could not tell what six checks in number were for, which he had signed as Trustee in the reorganization of the Central Forging Company of Catawissa, though he testified to signing many checks, as many as one hundred fifty at a time. Wherein these answers could be said to tend [fol. 56] to block the court's inquiry, or obstruct the functions of the court in its investigation, I cannot find, since the answers were not contumacious nor evasive nor artfully or designedly made, which could in any way mislead or have a tendency to forestall the inquiry and at most, if untrue, amount only to perjury.

In United States v. Appeal, supra, the illustrations given by the Supreme Court in the Hudgings case, supra, the defendant was held in contempt for what the court stated was "obviously a sham." In that instance, the witness testified before a Commissioner that he could not remember what he had done with large sums of money or how he had spent them, which he had drawn from a bank account, only four or five days before.

In O'Connell v. United States, supra, the witness was in attendance at a Grand Jury investigation covering the commission of a federal offense in connection with the "Albany Baseball Pool." Here, the defendant was held in contempt of court for plainly "holding back what he knew of the extent and duration of his acquaintance with some of the persons in connection with the pool whom he admitted knowing," and in "his refusal to state his best recollection" which made it impossible to pursue the inquiry further into matters whose relevancy might have clearly appeared. In

United States v. McGovern, supra, the witness was held in contempt of court upon his failure to disclose what uses he had made of Three Hundred Eighty Thousand Dollars ($380,000.00) which he withdrew in cash and concerning which he made a claim of privilege and which during the course of the testimony turned out to be a sham and where his answers were generally tantamount to palpable concealment. In United States v. Brown, 116 Fed. (2d) 455, the defendant was held in contempt of court when he testified that records material to the investigation had been burnt by him, when the evidence showed that they were later removed to a different place. In United States v. Karns, 27 Fed. (2d) 453, the defendant was held in contempt of court [fol. 57] because he presented false and fraudulent instruments in evidence, and for corruptly testifying falsely, with respect to their authenticity, which was directly pertinent to the issues in the case. In re Meckley, 137 Fed. (2d) 310, the presentment charged the defendant with giving answers to the questions which were false and subterfuges; "in blocking the search for truth by answering with the first preposterous fancy which he chose to put forward; in contumaciously parrying with the examiner and Grand Jurors". The court in this instance found that the conduct set forth in the presentment was true and that this amounted to contumacy. In Clark v. United States, 289 U. S. 11, the witness was held in contempt of court for falsely stating her past employment when called upon in her voir dire examination in which she deliberately concealed her employment by the defendant. Hence the court stated, supra, 11: "The petitioner is not condemned for concealment, though concealment has been proved. She is not condemned for false swearing though false swearing has been proved. She is condemned for that she made use of false swearing and concealment as the means whereby to accomplish her acceptance as a juror, and under cover of that relation to obstruct the course of justice". Throughout these cases I think it can be seen that in every instance, the answers of the witness held in contempt, amounted to a hindrance to the court in the pursuit of its inquiry.

In United States v. Arbuckle, 48 Fed. Supp. 537, a case oddly enough relied on by the majority, the court refused to hold a witness in contempt where the facts, it seems to me, disclose a far stronger case than the instant one. In

this case the witness admitted at the hearing on the contempt charge that his testimony given during the trial of an indictment for embezzlement had been false and untruthful, and that this testimony tended to establish the innocence of the defendant; as well as strongly suggest criminal guilt of a prosecution witness. In pointing out that there [fol. 58] was not necessarily, an inherent obstructive effect to false swearing, the court says, supra, 538: "What, then, is perjury having "obstructive effect" to which the Supreme Court referred? (Reference is made to Ex Parte Hudgings, supra.) A study of the decided cases which bear on this point seems to establish that it is "perjury which blocks the inquiry". This is the definition given by Hand, J., in United States v. Appeal, D. C. 211 F. 495, a case referred to by the Supreme Court, in its Hudgings' decision, as illustrating its view. If false testimony given in a case results in a defiance of the Court or in frustration of its right to obtain testimony, then the witness in legal effect is contumacious, he is a contemnor, as well as a perjurer, and may be punished for contempt. But if the witness fully gives testimony, and in so doing testifies falsely, not in order to prevent the inquiry, but only in order to deceive, there is no contumacy, no blocking of the inquiry, and the remedy is solely by indictment for perjury and trial by jury". It seems to me that a careful study of the testimony given before the Grand Jury in the instant case in nowise measures up to the conduct of the defendants in any of the cases herein cited. He was not contumacious, he was not obstreperous; his answers were responsive, and while as I have indicated, I do not feel he was telling the truth at all times, I cannot possibly see where any of his answers, aside from being possibly perjurious, tended in anywise to block the inquiry. At most his guilt or innocence should be decided by a trial upon indictment for perjury.

The use of this drastic power wherein a judge sits as accuser, trier of the fact, and dispenser of punishment, should only be exercised, when the obstruction to the performance of judicial duty is clearly shown. Ex. Parte Hudgings, supra. I feel it to be of prime importance, no more and no less, that witnesses called in any inquiry, should have ease and freedom of mind in testifying, as well, that they tell the truth and in nowise hinder the seeking of truth. It

[fol. 59] is in the proper maintenance of this balance, that lies the security of our courts.

Judgment should be reversed.

[fol. 60] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8734

In the Matter of ROBERT MICHAEL

ROBERT MICHAEL, Appellant

Present: Goodrich and McLaughlin, Circuit Judges, and Ganey, District Judge

JUDGMENT—Filed December 16, 1944.

On Appeal from the District Court of the United States for the Middle District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Middle District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

By the Court, Goodrich, Circuit Judge.

December 16, 1944.

[File endorsement omitted.]

[fol. 61] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 62] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 2, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944

No. 964 38

IN THE MATTER OF ROBERT MICHAEL, A GRAND JURY WITNESS,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF

ROBERT T. MCCRACKEN,
STANLEY F. COAR,
Counsel for Petitioner.

D. H. JENKINS,
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Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 964

IN THE MATTER OF ROBERT MICHAEL, A GRAND JURY WITNESS,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the United States:

Robert Michael, a citizen of the United States, petitioner in the above entitled matter, respectfully prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Third Circuit entered December 16, 1944, one Judge dissenting (R. 129-40), affirming the judgment of the District Court of the United States for the Middle District of Pennsylvania, entered September 22, 1944, convicting the petitioner of criminal contempt.

I. Summary Statement of Matter Involved

This was a proceeding to hold Robert Michael, the petitioner herein, in contempt before Hon. William F. Smith, United States District Court Judge, District of New Jersey,

specially presiding in the United States District Court for the Middle District of Pennsylvania.

On September 14, 1944, a special assistant to the Attorney General of the United States presented a petition asking the District Court to issue an order on petitioner to show cause why he should not be held in contempt of court, on the ground that he was a contumacious, prejurious and evasive witness before a Grand Jury then in session in the District Court for the Middle District of Pennsylvania (R. 3).

The court, on presentation of the petition, granted an order on petitioner to appear in court and show cause why he should not be held in contempt (R. 9). Petitioner's counsel filed a petition asking for a rule on Government counsel to furnish a bill of particulars (R. 10). The court denied the petition for a bill of particulars (R. 12).

On September 20, 1944, pursuant to the order of court, petitioner appeared in court with counsel, who presented a motion to quash the order to show cause and to dismiss the proceedings (R. 13). The court denied the motion (R. 14), and thereupon answer was filed on behalf of petitioner (R. 14).

The Government then proceeded to trial and presented testimony for the purpose of proving perjury on the part of petitioner.

On September 22, 1944, after the Government rested its case and after denial of petitioner's motion to quash and to dismiss the proceedings (R. 91), the District Court announced that it found the petitioner guilty of contempt of court. After a motion in arrest of judgment was made and denied, the court sentenced Robert Michael, the petitioner, to a term of six months in prison. Pursuant to judgment and order of commitment (R. 92), petitioner was committed to the Lackawanna County Jail, Scranton,

Pennsylvania. An appeal from the judgment of the District Court was allowed by the United States Circuit Court of Appeals for the Third Circuit(and on October 2, 1944, petitioner was released on bail pending appeal.

The Circuit Court of Appeals, on December 16, 1944, rendered an opinion (R. 129), in which two judges affirmed the judgment of the lower court, concluding that although there was no evidence that petitioner was contumacious or obstreperous and that his testimony cannot fairly be characterized as unresponsive, petitioner's rights were not disregarded and that he could have not only been found guilty of perjury but that such conduct on his part was an obstruction to the administration of justice and that he could be and was held liable for contempt.

The dissenting opinion (R. 134), although agreeing with the majority concerning certain procedural features in the case, disagreed as to the conclusion reached by the majority of the court and stated strongly that the evidence before the District Court did not warrant the trial judge in holding petitioner in contempt of court. The dissenting judge stated that "the use of this drastic power wherein a judge sits as an accuser, trier of the fact, and dispenser of punishment, should only be exercised, when the obstruction to the performance of judicial duty is clearly shown." He further held that no such obstruction was shown in the instant case.

II. Basis of Jurisdiction

Jurisdiction is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938. The opinion of the Circuit Court of Appeals for the Third Circuit was entered December 16, 1944. On December 26, 1944, the Circuit Court of Appeals stayed the mandate for thirty days from December 31, 1944, pending petitioner's application for a writ of certiorari.

III. Questions Presented

1. Is not a witness before a Federal Grand Jury, who is charged with perjury as a basis for criminal contempt of court, entitled to his constitutional protection to have his guilt or innocence decided by a jury of his peers upon indictment for perjury?

2. May a witness before a Federal Grand Jury be adjudged in contempt of court on the ground that he committed perjury before the Grand Jury where there is no evidence of obstruction of justice other than that inherent in the perjury itself?

3. May a witness before a Federal Grand Jury be adjudged guilty of contempt of court for perjury alone allegedly committed before the Grand Jury?

4. May a witness called before a Federal Grand Jury be adjudged guilty of contempt of court where the judgment of the trial court contains no formal finding that he was guilty beyond a reasonable doubt?

5. Can a judgment of criminal contempt be sustained where the defendant is charged originally with having given obstructive, evasive, perjurious and contumacious answers to the questions propounded to him before a Grand Jury, where the trial judge finds the defendant guilty only of perjury and evasiveness, and the Circuit Court of Appeals, on review, finds that there was no evasiveness, contumacy or obstreperousness?

6. May a defendant in a criminal proceeding be deprived of his constitutional right of trial by jury on the charge of perjury, under the guise of a summary hearing on the charge of contempt of court?

IV. Reasons for Granting the Writ

1. In sustaining the judgment of the District Court adjudging Robert Michael, the petitioner, guilty of criminal contempt, the Circuit Court of Appeals—

(a) has denied to the accused charged with perjury his constitutional guarantee to have the charge presented by indictment and his innocence or guilt tried by a jury of his peers;

(b) has, on a basic accusation of perjury, held that the obstruction of justice inherent in perjury is alone sufficient to sustain a commitment for criminal contempt of court;

(c) has departed from the principle that a judgment of conviction in a criminal case must recite a formal finding of guilty beyond a reasonable doubt; and

(d) has decided an important question of Federal law, enlarging the field of judicial power in criminal contempt cases beyond the limitations defined by the Supreme Court of the United States.

Prayer

For the foregoing reasons, which are developed in more detail in the accompanying brief, your petitioner prays that a writ of certiorari issue out of this Court to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and of all proceedings in the Circuit Court of Appeals had in this case, to the end that this case may be reviewed and determined by this Court; that the

decision of the Circuit Court of Appeals be reversed; and that your petitioner be granted such other and further relief as may be proper.

January 15, 1945.

Respectfully submitted,

ROBERT T. MCCRACKEN,
STANLEY F. COAR,
Counsel for Petitioner.

DANIEL H. JENKINS,
Scranton, Pa.;
J. BARTON RETTEW, JR.,
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Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinions Below

The judgment of the United States District Court for the Middle District of Pennsylvania, convicting the petitioner of criminal contempt (R. 92) is not reported. The opinion of the United States Circuit Court of Appeals for the Third Circuit dated December 16, 1944, is not as yet officially reported (R. 129-41).

II

Jurisdiction of This Court

The decision of the Circuit Court of Appeals for the Third Circuit was filed December 16, 1944 (R. 129) and on December 26, 1944, the order of mandate was stayed by the Circuit Court for thirty days from December 31, 1944, pending petitioner's application for a writ of certiorari. Jurisdiction of this Court is invoked under Judicial Code Section 240 (a), 28 U. S. C. A. Section 347 (a), as amended by the Act of February 13, 1925.

III

Statement of the Case

Petitioner seeks to review the judgment of the Circuit Court of Appeals for the Third Circuit, filed December 16, 1944, affirming the judgment and sentence entered in the United States District Court for the Middle District of Pennsylvania on September 22, 1944, after a hearing before the Honorable William F. Smith, D. J.

The facts have been set forth in the foregoing petition (p. 2) and will not be repeated.

IV

Specification of Errors to be Urged

The Circuit Court of Appeals for the Third Circuit erred:

1. In failing to find that the constitutional right of trial by jury on the charge of perjury was denied to the petitioner;

2. In finding that the obstruction of justice inherent in the perjury alone was sufficient to warrant the conviction for contempt;

3. In finding that there was any obstruction of justice other than that inherent in the perjury itself;

4. In sustaining a conviction for contempt of court where the judgment of the lower court did not contain a finding of guilt beyond a reasonable doubt;

5. In affirming the judgment of the lower court based upon admissions of incompetent evidence; and

6. In affirming the judgment of the District Court.

V

Argument.

(1)

The petitioner was denied his constitutional right of trial by jury.

The jurisdiction of the District Court to try the defendant on a charge embodied in the petition for citation to hold for contempt was challenged in the District Court by (a) a motion to quash (R. 13); (b) the answer to the petition (R. 14); (c) a motion to dismiss the proceedings (R. 91); and (d) a motion in arrest of judgment.

The question of the jurisdiction of the District Court was raised on appeal to the Circuit Court of Appeals under the statement of the first question involved in that appeal. The majority opinion in the Circuit Court of Appeals contented itself in disposing of this important question as follows:

> "For the purpose of the remainder of this discussion we shall assume the answers are untrue and that the accused might have been found guilty of perjury. May he likewise be found guilty of contempt of court and summarily punished accordingly or is he subject to prosecution for perjury only, in which he would be entitled to the Constitutional protection of trial by jury?"

The question is nowhere answered in the opinion of the majority until we get to the final paragraph of the opinion:

> "The point is not free from difficulty. We have considered it carefully with full recognition of the importance of the constitutional provision for a jury trial of a person charged with crime. Our conclusion is that the appellant's rights were not disregarded, that he could have not only been found guilty of giving untrue testimony but that such conduct on his part was an obstruction of the administration of justice and that he could be and was properly held liable in the contempt proceedings."

We submit that this is not an answer to the question propounded to itself by the Circuit Court of Appeals and does not dispose properly or adequately of the important question here involved, to wit, the right of the defendant to be tried by a jury of his peers as guaranteed by the Constitution of the United States. The true situation presented here is reflected in the dissenting opinion in the Circuit Court of Appeals, where we find the following language:

> "It seems to me that a careful study of the testimony given before the Grand Jury in the instant case is no-

wise measures up to the conduct of the defendants in any of the cases herein cited. He was not contumacious, he was not obstreperous; his answers were responsive, and while as I have indicated, I do not feel he was telling the truth at all times, I cannot possibly see where any of his answers, aside from being possibly perjurious, tended in anywise to block the inquiry. At most his guilt or innocence should be decided by a trial upon indictment for perjury.

"The use of this drastic power wherein a judge sits as accuser, trier of the fact, and dispenser of punishment, should only be exercised, when the obstruction to the performance of judicial duty is clearly shown."

For this statement in the minority opinion, there is ample support in *Ex Parte Hudgings*, 249 U. S. 378, 383.

(2)

The Circuit Court of Appeals was in error in sustaining the conviction for contempt of court based only on an obstruction of justice inherent in perjury.

The latest deliverence on this subject by the Supreme Court of the United States is in the case of *Clark* v. *U. S.*, 289 U. S. 1, where Justice Cardozo, speaking for the Court, said:

"Perjury by a witness has been thought to be not enough where the obstruction to judicial power is only that inherent in the wrong of testifying falsely."

In the same case, in the opinion, citing *Ex parte Hudgings, supra*, Justice Cardozo added:

"For offenses of that order the remedy by indictment is appropriate and adequate."

(3)

The Circuit Court of Appeals erroneously found there was an obstruction to justice other than that inherent in the perjury itself.

The only indication of substantive obstruction of justice discussed by the majority in its opinion is that in connection with six checks executed by the petitioner as trustee in reorganization proceedings. The witness did not deny knowledge of the checks but stated that he could not recall the purpose for which the checks were signed by him. The Court assumed that there was a false explanation of the checks. There was no explanation of the checks and the witness' explanation of his inability to tell what the checks were for consisted of his testimony that these may or may not have been a part of a batch of one hundred and fifty checks, which number of checks he at times signed in one day. The minority opinion, treating the same subject, states definitely that there was not any evidence tending to block the Court's inquiry or obstruct the functions of the Court in its investigation, since he, with the majority of the court, found that those same answers were not contumacious nor evasive nor artfully or designedly made, nor could they in any way mislead or have a tendency to forestall the inquiry, and at most, if untrue, amounted only to perjury. We respectfully submit that a citizen's liberties should not be taken from him on such meager findings as expressed in the majority opinion, particularly in view of the fact that the question pertaining to the six checks was put to the petitioner as a witness before the Grand Jury approximately two and one-half years after the checks had been signed and without giving to the petitioner access to a file which might have aided him in further explanation. As pointed out by the minority opinion, there wasn't any

one of the cases relied upon by the majority which had a similarity or applicability of facts.

(4)

The formal judgment of the District Court did not contain a finding of guilt beyond a reasonable doubt.

After hearing the testimony in open court, the trial judge stated that he was satisfied beyond a reasonable doubt that the petitioner here was guilty of evasiveness and perjury before a Grand Jury (R. 116). On the same day, the District Court handed down a formal judgment and order of commitment in which there is no finding of guilt beyond a reasonable doubt (R. 92). The Circuit Court dismissed the position of the petitioner by finding that there need not be a formal writing that there was a finding of guilt beyond reasonable doubt. Our position here is that the formal judgment and order of commitment upon which this petitioner was deprived of his liberty is the matter to which we must look to justify the Court's sentence. "Criminal contempts are crimes and the accused is entitled to the benefit of all of the Constitution's safeguards and cannot be convicted except by proof beyond a reasonable doubt".

U. S. v. Goldman, 277 U. S. 229.

In *U. S.* v. *Hark*, 320 U. S. 531, Mr. Justice Roberts, for the Supreme Court of the United States, held:

> "Where * * * a formal judgment is signed by the judge, this is *prima facie* the decision of judgment rather than a statement in an opinion or a docket entry."

We respectfully submit that the sentence of the defendant in this formal judgment, wherein there is no finding of guilt beyond a reasonable doubt, is totally void and should be reversed and the defendant discharged.

(5)

The Circuit Court of Appeals erred in sustaining the judgment of the lower court, which was based upon admission of incompetent evidence.

The lower court, over objection of counsel for the petitioner, received in evidence conversations had between persons not in the presence of the petitioner and the contents of which had never been communicated to petitioner. The trial judge, over the objection of counsel for the petitioner, received in evidence letters written by other persons and delivered to other persons when the writing of the letters and the contents of the letters were admittedly unknown to and unseen by the petitioner. The Circuit Court of Appeals tacitly admitted that the receipt of this evidence was in error, but justified the receipt of the evidence on the ground that it (the Circuit Court) "had every confidence in his (trial judge) ability and desire to weed out relevant from the irrelevant when it came to determining the weight of testimony against the accused."

We respectfully submit that the testimony was not objected to on the ground that it was irrelevant. It was objected to on the ground that it was incompetent and properly should not have become part of the record. The trier, in fact, should not have had access to it, even though the case was tried without a jury. The trial judge, as a human being, suffers from the frailty of the human, and could not erase from his mind the impression of guilt that this improperly received evidence must have created in his mind, and so we submit that the judgment entered by him must have been influenced by this incompetent evidence to the great prejudice of the petitioner.

(6)

The Circuit Court has decided an important question of Federal Law enlarging the field of judicial power in criminal contempt cases beyond the limitations defined by this Court.

The conviction and sentence of the petitioner under the circumstances of this case are, we believe, so unusual that no authority for them can be found in the decisions of the Supreme Court of the United States or the decisions of the highest courts of any of the several States. The procedure followed in the trial court below and concurred in by the Circuit Court, is an outstanding example of the denial to the petitioner of "due process of law". We wish to urge that such procedure is an innovation in American jurisprudence and if it is not promptly rejected by the highest courts, it will have, we believe, a pernicious effect on the administration of justice. If trial courts can do what the District Court did in this case, it will mean that while all persons charged with the commission of crime are guaranteed by the Sixth Amendment to the Constitution, the right to trial by jury, those individuals charged with the crime, perjury, are not entitled to a jury trial but may be tried, convicted and sentenced by a judge. We think all courts should say, as Judge Hand said in *U. S.* v. *Appel*, 211 Fed. Rep. 495, "This power (of summary conviction for contempt of court) must not be used to punish perjury." (Parenthesis supplied.)

The provisions of the Constitution cannot be evaded by alleging that a witness' testimony before a Grand Jury was perjury and that this perjury was a contempt of court for which the witness could be tried without a jury by a judge who did not hear the testimony, and convicted by that judge and sent to prison.

We respectfully submit that the action of the trial judge under the circumstances of this case is without precedent and if his action is sustained as a lawful exercise of judicial power, every witness who appears before a Grand Jury, or who testifies in any civil or criminal case, incurs the risk of having the trial judge of that court scan his testimony, and after taking the evidence of a few persons, or possibly of none, adjudge that witness guilty of perjury and, therefore, of contempt of court, and on a summary proceeding then imprison him. We feel that if this judgment is sustained, it will constitute a most serious breach of a sacred right guaranteed to a defendant by the Constitution.

Conclusion

It is respectfully submitted that for the reasons stated, this Petition for a writ of Certiorari should be granted.

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DANIEL H. JENKINS,
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(6269)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 964

IN THE MATTER OF ROBERT MICHAEL, A GRAND JURY WITNESS,

Petitioner

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER FOR ARGUMENT ON MERITS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 964

IN THE MATTER OF ROBERT MICHAEL, A GRAND JURY WITNESS,

Petitioner

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER FOR ARGUMENT ON MERITS

Statement

The purpose in submitting this brief as a supplement to the brief heretofore filed in support of the Petition for Writ of Certiorari is in order to stress and confine petitioner's argument principally to the crux of his case, which is contained in the following question.

May a witness before a Grand Jury be adjudged in contempt of court on the ground that he committed perjury before the Grand Jury, where there is no evidence of obstruction of justice other than that inherent in perjury itself?

In as much as statements concerning the opinions below, the jurisdiction of the court, the statement of the case, and the specification of errors, have been set forth in the brief accompanying the Petition (pp. 7, 8) they will not be repeated here.

Argument

There appears no better way to open this argument concerning the question involved than to refer to the dissenting opinion of Ganey; District Judge, wherein (R. 134) he states:

> "The question here posed, while seemingly a simple one, has deeper implications and greater significance beyond the immediate case, for as a precedent, it will broaden the field of judicial power in criminal contempt cases beyond its present limitations, and in so doing is portentous of a growing tendency through attrition to wear away the ancient instrument of fact finding—trial by jury."

Likewise, in the case of *United States* v. *Arbuckle*, 48 Fed. Supp. 537, (1943) Laws, Justice of the District Court, called upon to decide whether the Court had jurisdiction to summarily punish certain witnesses for giving false testimony, stated in his opinion (p. 537):

> "The Court must squarely decide the question of its jurisdiction to act, without regard to its own wishes or those of counsel. Where witnesses wilfully have given false testimony in open court, they should be dealt with promptly and severely. The deterrent force of punishment is loss by delay. Respect for the Courts will not be maintained if witnesses are permitted to give false testimony without both challenge and punishment. But there is another point of view, emphasized by the Supreme Court of the United States, that a judge has no power to punish for contempt by reason of false testimony alone, otherwise he would be in a position to force his will upon witnesses and control their testimony. To use its exact words, the Court said: 'Thus it would come to pass that a potentiality of oppression and wrong would result and the freedom of the citizen when called as a witness in a court would be gravely imperiled.' Ex Parte Hudgings, 249 U. S. 378, 384, 39 S. Ct. 337, 340, 63 L. Ed. 656, 659, 11 A. L. R. 333. In this case, the rule was laid down to be that in

a case of perjury committed in open Court, the judge may not punish for contempt, unless, in addition to the perjury, there clearly appears 'the further element of obstruction to the court in the performance of its duty'. The Court mentioned that other courts had decided to the contrary, but pointed out that these courts mistakenly had attributed 'a necessarily inherent obstructive effect to false swearing'. This seems to require a definition of what is meant by the term 'obstructive effect', for it is certain that in every perjury case the false testimony tends to obstruct justice. In most instances, if not in all, it has the further effect of imposing burdens on the court and counsel, inasmuch as it requires extensive cross-examination, refuting evidence, expense and delay. But these effects have been held not to constitute the 'obstruction to the court in the performance of its duty' referred to by the Supreme Court. *State* v. *Meese*, 200 Wis. 454, 460, 225 N. W. 746, 229 N. W. 31. What, then, is perjury having the 'obstructive effect' to which the Supreme Court referred? A study of the decided cases which bear on this point seems to establish that it is 'perjury which blocks the inquiry'. This is the definition given by Hand, J., in *United States* v. *Appel*, D. C. 211 F. 495, a case referred to by the Supreme Court in its Hudgings' decision, as illustrating its view. If false testimony given in a case results in defiance of the Court or in frustration of its right to obtain testimony, then the witness in legal effect is contumacious, he is a contemnor, as well as a perjurer, and may be punished for contempt. But if the witness fully gives testimony, and in so doing testifies falsely, not in order to prevent the inquiry, but only in order to deceive, there is no contumacity, no blocking of the inquiry, and the remedy is solely by indictment for perjury and trial by jury.''

It is impossible to reconcile the reliance of the Circuit Court in the instant case on the *Arbuckle* case, *supra*, in view of the conclusion of the Circuit Court that,

> "He was not contumacious or obstreperous. He did not refuse to answer questions. His testimony cannot be fairly characterized as unresponsive in failing to give direct answers to the questions asked him." (R. 131)

The same Court in its opinion then recognizes the proposition that:

> '"Perjury by a witness has been thought to be not enough where the obstruction to judicial power is only that inherent in the wrong of testifying falsely."' (R. 132)

The opinion then erroneously concludes:

> "If he denies knowledge of something which it is determined beyond a reasonable doubt that he does know about he is blocking the inquiry just as effectively by giving a false answer as refusing to give any at all." (R. 133)

We submit that such a contention is the equivalent of the Court finding that perjury per se amounts to a criminal contempt subjecting the perjurer to summary conviction, even though there was no evidence to sustain a finding that the alleged false testimony resulted in defiance of the Court or in frustration of its right to obtain testimony.

The result of the Circuit Court of Appeals' opinion is to enlarge the field of judicial power in criminal contempt cases beyond its present limitations.

The dissenting opinion of Ganey, J. (R. 136), in commenting on the majority opinion states:

> "Does the evidence in this case support the findings of the Trial Court? I think not. I agree with the findings of the majority that the defendant was not contumacious or obstreperous, that he did not refuse to answer questions, and further that his testimony cannot fairly be characterized as evasive in failing to give

> direct answers to the questions asked him, nor can it be said that his answers were not responsive. That he did not tell the truth in many instances, I am convinced. However, it is now well settled that a mere act of perjury on the part of a witness does not in and of itself, without something more, amount to contempt of court. *Ex Parte Hudgings*, 249 U. S. 378."

Under the constitutional system prevailing in this country, no civilian can legally be deprived of his liberty except after an indictment by a grand jury and a trial by a jury of twelve of his peers, except in those cases of contempt of court where summary action against a witness is necessary to prevent what amounts to an actual obstruction of the processes of justice. There is a discussion of this in a concurring opinion filed in the contempt case of the *Penn Anthracite Mining Co.* v. *Anthracite Miners of Pennsylvania*, 318 Pa. 401 (1935) at page 421. In that case the present Attorney General of the United States successfully maintained before the Supreme Court of Pennsylvania that the Pennsylvania Act of June 23, 1931, P. L. 925 which required a trial by jury of persons accused of contempt of court for acts not committed in the presence of the court was *not* in violation of the Constitution of Pennsylvania. In his concurring opinion in that case at page 419, Mr. Justice Maxey, the present Chief Justice of Pennsylvania, said: "Trial by jury is the corner-stone of our administration of justice." He quoted Blackstone's criticism of trials before a court of admiralty without a jury, as being "contrary to the genius of the law of England." The concurring opinion (p. 421) further says in a footnote:

> "Summary proceedings against those who commit contempt in the face of the court are based on compelling reasons. A judge while performing his duties has to repress disorder in or near the court room and overcome defiance of his authority by counsel or witnesses,

so that the court's business may proceed. He is in the position of an individual who while on a lawful journey finds his pathway unlawfully obstructed; he can use appropriate means to overcome aggressions. But when a judge's orders are disobeyed, as here, at a distance from the court room and by criminal acts, these acts become an affront to society and punishment rests with society. Both judges and individuals possess the right of self-defense, but punitive measures after an aggression is completed should not be left with him against whom the aggression was directed."

The view thus expressed is in its rationale in complete accord with what Justice Cardozo said in *Clark v. U. S.*, 289 U. S. 1 (1932), and with what Chief Justice White said in *Ex parte Hudgings*, 249 U. S. 378 (1919), and with what Judge Learned Hand said in *U. S. v. Appel*, 211 Fed. Rep. 495 (1913), already cited in this brief. The basic idea in all these judicial utterances is that to constitute contempt of court there must be such an "obstruction to judicial power" that the court's business cannot proceed until the obstruction is removed by summary action. According to Justice Cardozo, Chief Justice White and Judge Hand perjury by a witness is *not* such an obstruction.

In respect to the conviction and imprisonment of this petitioner, after a trial before a judge but without a jury, these three propositions are respectfully submitted to the Court. First, such a conviction and imprisonment is a *negation* of the doctrine consistently maintained by this Court that a witness' false testimony in order to constitute that "obstruction of justice" which may be summarily adjudged "contempt of court" must be so manifest that it can be determined beyond a doubt by the mere inspection of his answers that the witness knew that his testimony would not be credited and did not intend that it should be. When the witness' perjury can be established only by aid of the

testimony of other witnesses, in extrinsic proceedings, and he is to be tried, he is entitled to his constitutional right to trial *by jury*. This right to trial by jury includes the right to have his case first heard by a grand jury.

Second, the action of the court below in enlarging the field of judicial power in summary convictions is a *reversal* of the tendency which has been manifested in this country for over a century in both legislation and in judicial decisions to protect the individual against arbitrary and summary convictions by a judge acting without a jury. The power of Federal courts to punish for contempts was limited and defined by the Act of Congress of March 2, 1831, 4 Stat. at Large 487. This Act resulted from what the statesmen of that time considered an unjust and arbitrary action on the part of Judge Peck of the District Court in disbarring a lawyer for criticism of Judge Peck's opinions. The bill which became the Act of March 2, 1831, was reported to the House by James Buchanan, Chairman of the Judiciary Committee, and Daniel Webster reported the same bill favorably from the Judiciary Committee of the Senate. The Act of 1831 greatly restricted the power of the courts to punish for contempt. This Act was discussed in *Ex parte Robinson*, 19 Wallace 505 (1873). In later years the power of the courts to punish for contempt has been still more restricted, particularly in labor cases. In the Clayton Act of October 15, 1914, 38 Stat. 730, 738, 740, Congress provided that in the special cases of criminal contempt coming "within the purview of that Act, the accused was entitled to a jury trial upon demand". In discussing the Clayton Act, the House Committee on the Judiciary said: (62nd Congress, 2nd Sess. House Report No. 613, Part 2, accompanying House Report 22591 p. 10)

> "That complaints have been made and irritation has arisen out of the trial of persons charged with contempt

in the Federal courts is a matter of general and common knowledge. The charge most commonly made is that the courts, under the equity power, have invaded the criminal domain, and under the guise of trials for contempt, have really convicted persons of the substantive crimes for which, if indicted, they would have had a constitutional right to be tried by jury. It has been the purpose of your Committee in this Bill to meet this complaint, believing it to be a sound public policy so to adjust the processes of the courts as to disarm any legitimate criticism; and your Committee confidently believes that so far from weakening the power and effectiveness of Federal Courts, this Bill will remove a cause of just complaint and promote that popular affection and respect which is in the last resolve the true support of every form of governmental activity."

In *Gompers* v. *United States*, 233 U. S. 604 (1914), involving proceedings which judged certain persons guilty of contempt in violating the terms of an injunction restraining them from continuing a boycott, this Court said in an opinion by Justice Holmes at page 610:

"These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech. So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure. * * * The English courts seem to think it wise, even when there is much seeming reason for the exercise of a summary power, to leave the punishment of this class of contempts to the regular and formal criminal process. *Matter of MacLeod*, 6 Jur. 461. Maintenance of their authority does not often make it really necessary for courts to exert their own power to punish, as is shown by the English practice in more violent days than these, and there is no more reason for prolonging the period of liability when they see fit to do so than in the case

where the same offence is proceeded against in the common way."

Third, to permit judges to summarily convict and imprison witnesses for perjury will seriously impede the administration of justice. If upon the complaint of a District Attorney, judges are to be clothed with the power the judge exercised in this case, witnesses will naturally be in fear that if they do not testify as the District Attorney obviously desires them to they will be adjudged in contempt of court, and sent to jail. The result will be that in many cases the witness' desire to tell the truth will be subordinated to his desire not to displease the District Attorney lest the latter bring him before the judge, charge him with perjury and have him imprisoned. If this condition of affairs is to be legalized, we will have a situation closely resembling the infamous trial by torture, which Blackstone so emphatically condemned in Vol. 4, page 326.

About a decade ago during a period of sensational "state trials" in Russia, in which self-incriminating confessions of treason were the prosecution's chief reliance, it was generally believed by those Americans who studied these trials that many innocent persons confessed to crimes which they never committed in order to save themselves and their families from mental and physical torture, or both. It is not unreasonable to believe that if witnesses who appear before grand juries know that a District Attorney, who does not get from them the testimony he desires, can report them to a judge as mendacious, and that the judge can then act as both judge and jury and send them to jail for contempt of court, such witnesses may be tempted to *depart from the truth in order not to incur the District Attorney's displeasure.* A witness who appears before a grand jury is alone, he has no counsel there to make objection or otherwise to protect his rights, and a District Attorney can and ordinarily does ask *leading* questions of

witnesses who appear before grand juries, and his zeal to obtain indictments sometimes overshadows his zeal to administer even-handed justice.

When a witness is sent to jail for allegedly giving false testimony before a grand jury that fact is publicized in the newspapers (as it was in this case) and the effect in creating fear in subsequent witnesses before the grand jury and a desire to give the District Attorney the kind of evidence he wants is obvious to anyone acquainted with human nature. Many persons when called before a grand jury as witnesses are having an experience that is entirely new to them. The grand jurors (especially in Federal courts) are in most cases total strangers to them. The District Attorney is also usually a stranger to the witness. The District Attorney is clothed with majesty and power as a representative of the government of the United States. He is usually a skilful lawyer and an adroit examiner and knows exactly what he wants. Nearly every witness in such a situation is nervous and apprehensive. If in addition to these factors just named, the witness is aware of the fact that if his testimony is not as the District Attorney desires it to be he may be sent to jail by the judge who has the grand jury in charge, the administration of justice is thus likely to be obstructed in a much more substantial manner and on a much larger scale than it ever can be by the false testimony of a single witness. The grand jury is under Anglo-Saxon and American law a valuable agency for the protection of innocence as well as for law enforcement, but it will become an instrument of oppression if the constitutional safeguards of the individual are to be judicially disregarded.

If what was done in this case is to receive the sanction of the highest court in the land, any Federal judge can also during the *trial* of any case, if he believes a witness is not telling the truth, declare a recess of the case on trial, put

the witness on trial before him without a jury, adjudge him guilty of contempt of court because of his alleged false swearing and sentence him to prison. The intimidating and "*obstructing*" effect such a summiary proceeding would have on other witnesses who are waiting to be called in that same case can easily be imagined. The inclination of such witnesses *under such circumstances* would naturally be to *conform* their testimony to what the district attorney and the trial judge wanted to hear. Only a witness who was both truthful *and resolute* would have the hardihood to tell a story on the witness stand which might incur the suspicion of either the district attorney or the trial judge as to its truthfulness. Neither a trial judge nor a district attorney can claim infallibility in determining whether or not a witness is telling the truth for sometimes "truth is stranger than fiction". Witnesses in testifying should be free of official or other intimidation so that the course of justice may be unobstructed.

In his argument in defense of the right to trial by jury in *Ex Parte Milligan*, 4 Wallace 2 (1866), Jeremiah S. Black said, *inter alia*, at page 65:

> . . . . It seems necessary, therefore, not only to make the judiciary as perfect as possible, but to give the citizen yet another shield against his government. To that end they could think of no better provision than a public trial before an impartial jury.
>
> "We do not assert that the jury trial is an infallible mode of ascertaining truth. Like everything human, it has its imperfections. We only say, that it is the best protection for innocence and the surest mode of punishing guilt that has yet been discovered. It has borne the test of a longer experience, and borne it better, than any other legal institution that ever existed among men.
>
> . . . . . .

"Those colonists of this country who came from the British Islands brought this institution with them, and they regarded it as the most precious part of their inheritance. The immigrants from other places where trial by jury did not exist became equally attached to it as soon as they understood what it was. There was no subject upon which all the inhabitants of the country were more perfectly unanimous than they were in their determination to maintain this great right unimpaired. * * *

"* * * They knew very well that no people could be free under a government which had the power to punish without restraint. Hamilton expressed in the Federalist, the universal sentiment of his time, when he said, that the arbitrary power of conviction and punishment for pretended offences, had been the great engine of despotism in all ages and all countries. The existence of such power is incompatible with freedom."

After quoting the constitutional guaranties of trial by jury (Art. 3, sec. 2 and Arts. 5 and 6 of the Bill of Rights) Attorney Black said at page 54:

"Is there any ambiguity there? If that does not signify that a jury trial shall be the exclusive and only means of ascertaining guilt in criminal cases, then I demand to know what words, or what collocation of words in the English language would have that effect? Does this mean that a fair, open, speedy, public trial by an impartial jury shall be given only to those persons against whom no special grudge is felt by the Attorney-General, or the judge-advocate, or the head of a department? * * * No; the words of the Constitution are all-embracing, 'as broad and general as the casing air.' The trial of ALL crimes shall be by jury. ALL persons accused shall enjoy that privilege —and no person shall be held to answer in any other way."

When this Court announced its decision in *Ex Parte Milligan*, 4 Wallace 2 (1866), it was unanimous in declaring

that the petitioner in that case, Lambdin P. Milligan, who had been found guilty on certain charges and specifications and sentenced to be hanged, by a military commission, had been deprived of his constitutional right to trial by jury and was entitled to be discharged from custody. In delivering the opinion of the Court, Justice Davis said at page 122:

> "Another guarantee of freedom was broken when Milligan was denied a trial by jury. The great minds of the country have differed on the correct interpretation to be given to various provisions of the Federal Constitution; and judicial decision has been often invoked to settle their true meaning; but until recently no one ever doubted that the right of trial by jury was fortified in the organic law against the power of attack. It is now assailed; but if ideas can be expressed in words, and language has any meaning, this right—one of the most valuable in a free country—is preserved to every one accused of crime who is not attached to the army, or navy, or militia in actual service. * * * This privilege is a vital principle, underlying the whole administration of original justice; it is not held by sufferance, and cannot be frittered away on any plea of state or political necessity. * * * these safeguards need, and should receive, the watchful care of those intrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution."

Counsel for this petitioner contend that when in *contempt* proceedings he was in effect adjudged guilty of the crime of perjury and sentenced to prison without a trial by jury he was denied a right guaranteed him and every other American citizen, by the Constitution of the United States. If witnesses testify falsely their guilt of perjury should be pronounced only after their indictment by a grand jury and after they are found guilty by the unanimous verdict of twelve trial jurors. Perjury is a *crime*, just as much as

larceny, or forgery, or assault and battery is a crime, and an individual charged with the crime of perjury cannot, unless the constitution is disregarded, be denied his right to a trial by jury by the simple expedient of calling perjury "contempt of court." One of the most precious rights guaranteed a citizen by the Constitution of the United States should *not* be held to be so chameleonic that the judicial recognition to be accorded it will depend upon a mere play on words in characterizing the acts of him who invokes it.

It is respectfully submitted that for the reasons stated and upon the authorities cited, as well as those contained in the brief accompanying the Petition for Writ of Certiorari, that the judgment of the lower court should be reversed.

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No. 964

In the Supreme Court of the United States

OCTOBER TERM, 1944

IN THE MATTER OF ROBERT D. MICHAEL, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The majority (R. 129–134) and dissenting (R. 134–140) opinions in the circuit court of appeals have not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered December 16, 1944 (R. 140). The petition for a writ of certiorari was filed February 20, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code,

as amended by the Act of February 13, 1925 (Pet. 3).[1]

QUESTIONS PRESENTED

1. Whether the evidence supports the finding that petitioner was guilty of contempt before the grand jury.

2. Whether the judgment is void because it failed to recite that it was based on a finding of guilty beyond a reasonable doubt.

3. Whether petitioner's conviction was based upon incompetent evidence.

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[1] In *United States ex rel. Brown* v. *Lederer*, 139 F. 2d 861, the Circuit Court of Appeals for the Seventh Circuit held that by virtue of the Act of November 21, 1941, c. 492, 55 Stat. 776, 18 U. S. C. 689, extending the authority of this Court under 18 U. S. C. 687 and 688 to promulgate rules of procedure in criminal cases to cover proceedings to punish for criminal contempt, the Criminal Appeals Rules automatically became applicable to such proceedings. In this view the petition for certiorari is out of time. However, it is our position that the Criminal Appeals Rules do not apply in the absence of an order by this Court extending them to appeals in contempt proceedings, and we therefore do not contest the timeliness of the petition.

In addition, it is to be noted that petitioner's appeal to the circuit court of appeals was taken by notice of appeal (see R. 2), rather than by application for allowance of appeal, as required by Section 8 (c) of the Judiciary Act of February 13, 1925, 28 U. S. C. 230. See *Nye* v. *United States*, 313 U. S. 33, 43–44. However, on October 2, 1944, within three months from the date of the judgment of the district court, the circuit court of appeals admitted petitioner to bail pending disposition of his appeal (R. 2, 92–93, 127–128). For the purpose of conferring jurisdiction upon the circuit court of appeals we do not dispute that this constituted sufficient compliance with the technical requirements of Section 8 (c).

STATUTE INVOLVED

Section 268 of the Judicial Code (28 U. S. C. 385) provides in part as follows:

> The courts of the United States shall have power * * * to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, * * * and the disobedience or resistance by any * * * witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.

STATEMENT

On September 14, 1944, upon direction of the grand jury in session in the United States District Court of the Middle District of Pennsylvania (R. 94–95), a petition was filed before a judge of that court for a rule to show cause why petitioner, a witness before the grand jury, should not be held in contempt. The petition alleged that, in the course of an inquiry into alleged frauds against the United States, the grand jury was investigating the reorganization proceedings of the Central Forging Co. of Catawissa, Pennsylvania, of which petitioner had been appointed trustee by the district court; that petitioner was called as a witness before the grand jury and gave obstruc-

tive, evasive, perjurious, and contumacious answers to questions propounded to him, and obstructed the investigation of the grand jury. (R. 3–9.) An order to show cause was issued (R. 9–10), petitioner filed an answer (R. 14–19),[2] and a hearing was had at which testimony of various witnesses was taken and petitioner's testimony before the grand jury was introduced in evidence.

The evidence introduced by the Government may be summarized as follows:

Petitioner, as trustee in reorganization of the Central Co., discussed with Harry S. Knight, the attorney for the Maxi Manufacturing Co., a creditor, a plan whereby the assets of Central would be transferred to Maxi for approximately $25,000 (R. 69, 119). In discussing the proposed plan with Hervey Smith, the attorney for one of the other creditors, petitioner and his attorney, Reifsnyder, advised Smith that if he would induce his client to accept the plan, $500 would be paid to him (R. 114, 115). When it appeared that the proposed plan would be accepted by the creditors, petitioner, Reifsnyder, and Knight discussed the fees that probably would be allowed in the proceeding, and petitioner and Reifsnyder expressed dissatisfaction with the amount they would probably receive. It was then suggested that the value

[2] Petitioner also filed a petition for a bill of particulars (R. 10–11) and a motion to quash the rule (R. 13), both of which were denied (R. 12, 14).

of the assets of Central be fixed at $3,000 less than the amount previously agreed upon and that such sum be paid to petitioner by the Maxi Co. (R. 97–100.) This p[illegible] was consummated, and on April 24, 1942, the date of the transfer of the assets of Central, Maxi paid $3,000 to an attorney, George Fenner, who endorsed the check and left it with the petitioner and Reifsnyder, receiving $500, the amount agreed upon as the sum he would be required to pay as additional income tax (R. 106–107, 109–112). In petitioner's presence, Reifsnyder paid $500 to Hervey Smith on the same day (R. 115).

Homer Davis, treasurer of Maxi (R. 125), was, prior to the transfer of the assets of Central, employed as auditor and bookkeeper by petitioner in the latter's capacity as trustee of Central (R. 56, 57, 102). On April 10, 1942, petitioner told Davis that he needed "a large amount of money," $2,000; that "in cases of the kind that we were in it was necessary to spread a little oil" (R. 102). Davis asked whether he should prepare a check payable to petitioner for that amount, and the latter replied that there should be several checks payable to "cash" and that Davis should prepare one payable to himself and should enlist the help of Max Long, president of Maxi (R. 125), who was also employed by petitioner in his capacity as trustee (R. 59), and prepare another check payable to Long (R. 102). Davis then prepared

such checks for petitioner's signature as trustee of Central, and petitioner took them, stating that he would have them countersigned by John Crolly, the referee in bankruptcy; that "he didn't believe John Crolly would know what he was signing" (R. 102–103). The checks thus prepared by Davis consisted of two in the sum of $600 each, drawn to the order of Davis and Long, respectively, and three payable to "cash" in the sums of $450, $250, and $300 (R. 104; Gov. Ex. 5, R. 120–124). On April 16, 1942, petitioner telephoned Davis and stated that he was sending the checks by messenger and on the following morning, April 17, the messenger appeared with the checks (R. 103), which had in the meantime been signed by petitioner and countersigned by Crolly (R. 105, 120–124). Davis then secured Long's endorsement and cashed all five of the checks (R. 104). After taking out $200 previously agreed upon as covering his and Long's additional income taxes, Davis turned over $2,000 to the messenger (R. 105–106).

In his testimony before the grand jury, petitioner denied that there was any discussion of a reduction of the value of the assets of Central for the purpose of enabling him and his attorney to obtain additional fees, denied any knowledge of the $3,000 paid to Fenner by Maxi, and denied receipt of any additional fee other than that allowed by the court (R. 36, 53–54, 68, 73–77, 86,

88–89). He stated that Reifsnyder gave $500 to Hervey Smith out of the compensation allowed to Reifsnyder (R. 54, 78). As to the $600 checks payable to Davis and Long, petitioner admitted that he knew the payments were not for salaries, but stated that he could not remember the reason for the checks. He denied that he had received the proceeds of such checks. (R. 56–61.) At a later appearance before the grand jury, he testified that these checks might have represented bonuses to these men, although he did not authorize such bonuses (R. 84). Petitioner explained the checks drawn to "cash" merely as petty cash withdrawals. He had no explanation for the fact that all three of these checks were cashed on the same day as the Davis and Long checks. (R. 61–62, 64–66.) He denied ever discussing the five checks with Davis, denied telling Davis by telephone that he was sending a messenger with the checks, denied sending the messenger, and denied receiving the proceeds of the checks (R. 61–62, 64–66, 87–88). Petitioner also denied telling Davis that it was necessary to "spread a little oil" (R. 88).

At the close of the case, the trial judge stated orally that he was "convinced beyond a reasonable doubt" that petitioner was guilty of contempt, referring particularly to the $3,000 transaction and the five checks cashed on April 17. The judge further stated that he was convinced that peti-

tioner's testimony with reference to these transactions "was wilfully and deliberately false and was given with the wilful and deliberate intent to obstruct the Grand Jury in its inquiry, and this Court in the due administration of justice." (R. 116.)

Thereafter the judge entered a written "Judgment and Commitment" sentencing petitioner to six months' imprisonment; the judgment recited that petitioner, having been duly sworn as a witness and questioned before the grand jury concerning matters relevant and material to its inquiry, had given "false and evasive" testimony, and that "the false and evasive testimony * * * obstructed the said Grand Jury in its inquiry and the due administration of justice" (R. 92–93).

On appeal, the judgment of the district court was affirmed (R. 140), one judge dissenting (R. 134–140).

ARGUMENT

1. The district court and all three judges of the circuit court of appeals were agreed that petitioner's testimony before the grand jury was knowingly false in respect of material matters (R. 92–93, 131–132, 136), and petitioner does not here challenge that finding. He contends, however (Pet. 4, 5, 8–12, 14–15), that his false testimony was not of such a character as to justify his conviction for contempt.

The legal principles governing the question whether perjury may be treated as contempt are well settled, and both the majority and the dissenting judges in the circuit court of appeals agreed in their statement of those principles (cf. R. 132–133 with R. 136–137). Perjury alone is not contempt, but perjury which tends to block the inquiry or to hinder the court in the performance of its functions does constitute contempt. *Ex parte Hudgings*, 249 U. S. 378, 382–384; *Clark* v. *United States*, 289 U. S. 1, 11. The division of opinion in the circuit court of appeals was merely on the question whether the perjury here proved would have such a tendency "to block the inquiry."

We submit that the majority of the circuit court of appeals was correct in upholding the finding of the district judge that petitioner's perjurious testimony "obstructed the said grand jury in its inquiry and the due administration of justice" (R. 92–93; see also R. 116). As the majority pointed out (R. 134), petitioner's testimony in response to questions as to the batch of checks cashed on April 17, amounting in all to $2,200 (see *supra*, pp. 5–6, 7), was just as obstructive to the grand jury's investigation as an attempt to destroy the checks would have been. Petitioner gave vague and misleading explanations for the payments of $600 each to Davis and Long and failed to explain the cash withdrawals totaling

$1,000 other than as "petty cash" (see *supra*, p. 7). His explanation that he could not remember the exact purposes for which the checks were drawn because he signed approximately 150 checks a week (R. 66), was disingenuous. In a reorganization proceeding a trustee appointed by the court, who has the duty to account to the court, does not lightly authorize the withdrawal of $1,000 in cash on one day and the payment of $1,200 to two employees for some unknown purpose on the same day as a routine matter. We think that the opinion of the dissenting judge below is based upon a failure to appreciate the extraordinary nature of such a transaction and a misconception of the effect of petitioner's testimony in respect thereto on the course of the grand jury's investigation (see R. 137). There was evidence at the trial (see *supra*, pp. 5–6), and apparently also before the grand jury (see R. 88), that petitioner withdrew $2,000 designedly for the purpose of "spreading a little oil." The use to which petitioner put that money was a very pertinent point of inquiry by the grand jury, since it might have revealed the identity of other persons implicated in the fraudulent scheme. Hence, when petitioner, who received the money, falsely testified that he had not received it, he very effectively balked investigation by the grand jury as to the purpose of the withdrawals and the manner in which he disposed of the money. He

thus hindered the grand jury from obtaining important and relevant evidence. Similarly, petitioner's denial of any knowledge of the transaction by which the value of the assets of the Central Forging Co. was reduced, and his denial of the receipt of any part of the $3,000 paid to Fenner (*supra*, pp. 4–5, 6), was more than mere perjury. There was a possible inference from the testimony as a whole that not all of the $2,500 which petitioner and Reifsnyder received from the transaction was retained by them. Petitioner's bland denial of the whole transaction, which was proved to be false, prevented further inquiry into the disposition of this money.

Certainly the fact that petitioner's answers were not on their face contumacious, evasive, or unresponsive does not relieve him of liability for contempt. So to hold would be to reward skill in the art of lying. Petitioner's ready falsehoods were just as effective a block to the grand jury's inquiry as the more obvious evasiveness established in the cases cited by the dissenting judge below (R. 137–139). Since, as two courts have justifiably found, petitioner's testimony was not only false but was also a deliberate barrier to further significant inquiry by the grand jury, petitioner was properly adjudged guilty of contempt.

2. There is no merit in petitioner's contention (Pet. 12) that the judgment of conviction is void because it does not contain an express statement

that it was based upon a finding of guilt beyond a reasonable doubt. Petitioner does not contend that the trial judge did not in fact find him guilty beyond a reasonable doubt, for the judge himself so stated orally at the close of the trial (R. 116); petitioner argues merely that such a finding must be included in the judgment. That the trier of fact in a contempt proceeding must be convinced of guilt beyond a reasonable doubt is, of course, established, but the ultimate judgment in the case is either guilty or innocent. There is no more reason to include a statement as to conviction beyond a reasonable doubt in a judgment entered after a trial by a court than there is in a judgment entered after a trial by jury.

3. Petitioner asserts generally that the trial judge admitted "incompetent evidence" (Pet. 13), but does not specify the evidence to which he objects and has not included his objections in the printed record. Presumably, one of the exhibits to which he refers as "letters written by other persons and delivered to other persons" (Pet. 13) is Government's Exhibit G-2 (R. 117–118), a letter written by Knight to Davis containing a resumé of Knight's conference with petitioner and Reifsnyder at which the $3,000 reduction in the sale price of Central's assets was arranged (see *supra*, pp. 4–5). The letter contained the same information as was testified to by Knight directly (R. 96–99) and was therefore merely cumulative.

We submit that the circuit court of appeals was clearly correct in holding (R. 131):

> We find nothing in the court's action here which results in prejudice to the accused. The trial judge accepted the evidence so that he could get the whole picture and we have every confidence in his ability and desire to weed out the relevant from the irrelevant when it came to determining the weighing of the testimony against the accused.[3]

CONCLUSION

For the foregoing reasons we respectfully submit that the petition for a writ of certiorari should be denied.

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MARCH 1945.

[3] The dissenting judge agreed that there was no error in the admission of evidence (R. 134).

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 38

IN THE MATTER OF ROBERT D. MICHAEL, PETITIONER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority and dissenting opinions in the circuit court of appeals (R. 129–140) are reported at 146 F. 2d 627.

JURISDICTION

The judgment of the circuit court of appeals was entered December 16, 1944 (R. 140). The petition for a writ of certiorari was filed February 20, 1945, and was granted April 2, 1945 (R. 140). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as

amended by the Act of February 13, 1925. See also *Nye* v. *United States*, 313 U. S. 33, 43–44.[1]

QUESTION PRESENTED

Whether false and evasive answers by a trustee in bankruptcy testifying before a grand jury which was investigating, *inter alia*, the proceeding in which he was acting as a trustee, constituted a contempt of court.[2]

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[1] As pointed out in our brief in opposition (footnote 1, p. 2), if the Act of November 21, 1941, c. 492, 55 Stat. 779, 18 U. S. C. 689, which extended the authority of this Court under 18 U. S. C. 687 and 688 to promulgate rules of procedure in criminal cases to cover proceedings to punish for criminal contempt, had the effect of automatically extending the Criminal Appeals Rules to contempt proceedings, as held by the Circuit Court of Appeals for the Seventh Circuit in *United States ex rel. Brown* v. *Lederer*, 139 F. 2d 861, the petition for a writ of certiorari was out of time. However, it is our position that the Criminal Appeals Rules do not apply in the absence of an order by this Court extending them to appeals in contempt proceedings, and we therefore do not contest the timeliness of the petition.

We also stated in our brief in opposition, in the same footnote, that we thought there was a sufficient compliance with the technical requirements of Section 8 (c) of the Act of February 13, 1925, 28 U. S. C. 230, for appeal to the Circuit Court of Appeals, even though petitioner did not file a formal application for the allowance of an appeal.

[2] Two other questions were presented by the petition for a writ of certiorari, i. e., whether the judgment is void because it does not contain an express statement that it was based upon a finding of guilt beyond a reasonable doubt and whether the trial court admitted incompetent evidence. These points are not discussed in petitioner's supplemental brief on the merits; they are dealt with in the Government's

STATUTE INVOLVED

Section 268 of the Judicial Code (28 U. S. C. 385) provides as follows:

> The courts of the United States shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.

STATEMENT

On September 14, 1944, upon direction of the grand jury in session in the United States District Court of the Middle District of Pennsylvania (R. 94–95), a petition was filed before a judge of that court for a rule to show cause why petitioner, a witness before the grand jury, should not be held in contempt. The petition alleged that, in the course of an inquiry into alleged

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brief in opposition (pp. 11–13) and in the opinion below (R. 131). It may be added that the dissenting judge agreed with the majority's disposition of these two questions.

frauds against the United States, the grand jury was investigating the reorganization proceedings of the Central Forging Company of Catawissa, Pennsylvania, of which petitioner had been appointed trustee by the district court; that petitioner was called as a witness before the grand jury and gave obstructive, evasive, perjurious and contumacious answers to questions propounded to him, and deliberately obstructed the investigation of the grand jury. (R. 3–9.) An order to show cause was issued (R. 9–10), petitioner filed an answer (R. 14–19),[3] and a hearing was had at which testimony of various witnesses was taken and petitioner's testimony before the grand jury was introduced in evidence.

The evidence introduced by the Government may be summarized as follows:

On January 1, 1942, petitioner was appointed successor trustee in reorganization of the Central Forging Company (R. 29). He discussed with Harry S. Knight, the attorney for the Maxi Manufacturing Company, a creditor, a plan whereby the assets of Central would be transferred to Maxi for approximately $25,000 (R. 69, 119). In February 1942, when discussing the proposed plan with Hervey Smith, the attorney for one of the other creditors who had opposed a previous reorganization plan (R. 40, 52), peti-

[3] Petitioner also filed a petition for a bill of particulars (R. 10–11) and a motion to quash the rule (R. 13), both of which were denied (R. 12, 14).

tioner and his attorney, Reifsnyder, advised Smith that if he would induce his client to accept the plan, $500 would be paid to him (R. 114–115). On April 8, 1942, when it appeared that the proposed plan would be accepted by the creditors, petitioner, Reifsnyder, and Knight discussed the fees that probably would be allowed in the proceeding, and petitioner and Reifsnyder expressed dissatisfaction with the amount they would probably receive. It was then suggested that the value of the assets of Central be fixed at $3,000 less than the amount previously agreed upon and that such sum be paid by the Maxi Company to a third party for subsequent delivery to petitioner (R. 97–100).

Homer Davis, treasurer of Maxi (R. 125), was, prior to the transfer of the assets of Central, employed as auditor and bookkeeper by petitioner in the latter's capacity as trustee of Central (R. 56, 57, 102). On April 10, 1942, petitioner told Davis that he needed "a large amount of money," about $2,000. Davis asked if petitioner was referring to the $3,000 agreed upon and petitioner replied that the money he needed was in addition to that sum; that "in cases of the kind that we were in it was necessary to spread a little oil" (R. 102). Davis asked whether he should prepare a check payable to petitioner for that amount, and the latter replied that there should be several checks payable to "cash" and that Davis should prepare one payable to himself and should enlist the help

of Max Long, president of Maxi (R. 125), who was also employed by petitioner in his capacity as trustee (R. 59), and prepare another check payable to Long (R. 102). Davis then prepared such checks for petitioner's signature as trustee of Central, and petitioner took them, stating that he would have them countersigned by John Crolly, the referee in bankruptcy; that "he didn't believe John Crolly would know what he was signing" (R. 102–103). The checks thus prepared by Davis consisted of two in the sum of $600 each, drawn to the order of Davis and Long, respectively, and three payable to "cash" in the sums of $450, $250, and $300 (R. 104; Gov. Ex. 5, R. 120–124). On April 16, 1942, petitioner telephoned Davis and stated that he was sending the checks by messenger and on the following morning, April 17, the messenger appeared with the checks (R. 103), which had in the meantime been signed by petitioner and countersigned by Crolly (R. 105, 120–124). Davis then secured Long's endorsement and cashed all five of the checks (R. 104). After taking out $200 previously agreed upon as covering his and Long's additional income taxes, Davis turned over $2,000 to the messenger (R. 105–106).

On April 24, 1942, the date of the transfer of the assets of Central, the entire plan was consummated. Maxi paid $3,000 to an attorney, George Fenner, who endorsed the check and left it with petitioner and Reifsnyder (R. 106). After the

closing the parties went to the Catawissa National Bank and obtained cash for the $3,000 check. Five hundred dollars, the amount agreed upon as the sum Fenner would be required to pay as additional income tax, was given to him. Reifsnyder took $500, and the balance was retained by petitioner (R. 107, 110–112). During the course of the transaction, Fenner, in petitioner's presence, stated that "he didn't like it and wished that it could be done some other way" and petitioner replied that only the persons in the room would ever know about it (R. 106–107, 115). Later that day Reifsnyder, in petitioner's presence, paid $500 to Hervey Smith (R. 115).

In his testimony before the grand jury, petitioner denied that there was any discussion of a reduction of the value of the assets of Central for the purpose of enabling him and his attorney to obtain additional fees, denied any knowledge of the $3,000 paid to Fenner by Maxi, stated that he did not recall whether he was at the Catawissa bank on the day of the transfer of the assets of Central, and denied receipt of any additional fee other than that allowed by the court (R. 36, 39, 53–54, 68, 73–77, 86, 88–89). He stated that Reifsnyder gave $500 to Hervey Smith out of the compensation allowed to Reifsnyder (R. 40–45, 54, 78); that Reifsnyder owed Smith the money and wanted to pay him (R. 44). As to the $600 checks payable to Davis and Long dated April 10,

1942, which were cashed on April 17, petitioner admitted that he knew the payments were not for salaries, but stated that he could not remember the reason for the checks (R. 56–57, 59–60, 61). Petitioner explained the checks drawn to "cash" merely as petty cash withdrawals (R. 61–62). He testified that he could not remember any of the five checks because he signed approximately 150 checks a week (R. 56). He subsequently stated that "for all practical purposes" Maxi had already taken over the business and that he did not watch expenditures carefully, although he admitted that on April 14 he had filed a report of the assets of the Central Forging Company (R. 57–58, 60, 62–64). At a later appearance before the grand jury, he testified that the checks to Davis and Long might have represented bonuses to those men, although he did not authorize such bonuses (R. 84). He had no explanation for the fact that all five of the checks were cashed on the same day (R. 61–62, 64–66). He denied ever discussing the five checks with Davis, denied telling Davis by telephone that he was sending a messenger with the checks, denied sending the messenger, and denied receiving the proceeds of the checks (R. 61–62, 64–66, 87–88). Petitioner also denied telling Davis that it was necessary to "spread a little oil" (R. 88).

At the close of the case, the trial judge stated orally that he was "convinced beyond a reasonable

doubt" that petitioner was guilty of contempt, referring particularly to the $3,000 transaction and the five checks cashed on April 17. The judge further stated that he was convinced that petitioner's testimony with reference to these transactions "was wilfully and deliberately false and was given with the wilful and deliberate intent to obstruct the Grand Jury in its inquiry, and this Court in the due administration of justice." (R. 116.)

Thereafter the judge entered a written "Judgment and Commitment" sentencing petitioner to six months' imprisonment; the judgment recited that petitioner, having been duly sworn as a witness and questioned before the grand jury concerning matters relevant and material to its inquiry, had given "false and evasive" testimony, and that "the false and evasive testimony * * * obstructed the said Grand Jury in its inquiry and the due administration of justice" (R. 92–93).

On appeal, the judgment of the district court was affirmed (R. 140), one judge dissenting (R. 134–140).

SUMMARY OF ARGUMENT

1. This Court has laid down the rule that, although perjury alone in the presence of the court is not punishable as contempt, an act obstructive of justice is none the less so punishable even

though perjury is the means used to effect such end. *Ex parte Hudgings*, 249 U. S. 378; *Clark* v. *United States*, 289 U. S. 1.

Petitioner's conduct had the obstructive element necessary to constitute contempt. The grand jury, which was inquiring into the system of bankruptcy administration in the district, was interested, not merely in tracing funds into petitioner's hands, but in discovering the disposition of such funds by petitioner. By giving misleading answers as to the manner whereby the money was withdrawn, and denying receipt of any part of the money extracted from the assets of the Central Forging Company, petitioner effectively blocked any inquiry into the disposition of the funds, and thus obstructed the grand jury in the performance of its functions.

2. Evasive answers by a witness, designedly concealing facts which the witness must have known, is contumacious conduct, punishable as contempt, even though perjury alone may not be. Petitioner's testimony, particularly in respect of the five checks cashed on April 17, was of this character. His different explanations of his alleged inability to recall his reasons for signing the five checks were evasive on their face. When considered in relation to the established fact that petitioner had deliberately planned the scheme for the withdrawal of money by means of the

checks, it is clear that his entire testimony in this regard was a series of evasive answers, deliberately designed to mislead the grand jury.

3. Petitioner's conduct also constituted misbehavior by an officer of the court in his official transactions. At the time petitioner testified before the grand jury he was still trustee of the Central Forging Company and thus an officer of the district court. He was testifying before an arm of the same court in respect of the very matter in which he was acting as trustee. His failure to make full and frank disclosure of all relevant information was thus a breach of his official duty.

ARGUMENT

I

UNDER THE DECISIONS OF THIS COURT AN OBSTRUCTION OF JUSTICE BY PERJURY IN THE PRESENCE OF THE COURT IS PUNISHABLE AS CONTEMPT. THE FACTS IN THIS CASE ESTABLISH SUCH OBSTRUCTION

In *Ex parte Hudgings*, 249 U. S. 378, 383, this Court decided that perjury committed in the presence of the court does not constitute contempt; "that in order to punish perjury in the presence of the court as a contempt there must be added to the essential elements of perjury under the general law the further element of obstruction to the court in the performance of its

duty."[4] The logic of such a holding—that deliberate falsification by a witness sworn to tell the truth does not *per se* obstruct the administration of justice—is open to question for, as the majority below indicated, referring to the opinion in *United States* v. *Arbuckle*, 48 F. Supp. 537 (D. C. D. C.) 538, "It imposes burdens on court and counsel and its refutation takes time and expense" (R. 132). But as appears from the *Hudgings* decision itself, the Court was concerned with striking a balance between the power of the court to vindicate its integrity and the right of the individual to testify without fear of coercion (see 249 U. S. at p. 384). We do not question the desirability of the rule enunciated

[4] Petitioner does not question that his perjury was committed in the presence of the court. It is well settled that the grand jury is an appendage of the court, and proceedings before it are regarded as being in the presence of the court. *United States* v. *Dachis*, 36 F. 2d 601, 602 (S. D. N. Y.); *In re Presentment by Grand Jury of Ellison*, 44 F. Supp. 375 (D. Del.), affirmed, 133 F. 2d 903 (C. C. A. 3), certiorari denied, 318 U. S. 791; see also *Camarota* v. *United States*, 111 F. 2d 243, 246 (C. C. A. 3), certiorari denied, 311 U. S. 651; *United States* v. *Brown*, 116 F. 2d 455 (C. C. A. 7); cf. *Savin, Petitioner*, 131 U. S. 267, 277.

The contentions made in the petition for a writ of certiorari which was denied in the *Ellison* case, *supra*, were that the geographical rule announced in *Nye* v. *United States*, 313 U. S. 33, in respect of the "so near thereto" phrase, required that the conduct be in the actual, physical presence of the court, excluding, in consequence, misbehavior in the grand jury room, and that the misbehavior punishable was limited to disturbances of the court's order "by 'noise, tumultuous or disorderly behavior,' or similar misbehavior" (No. 832, October Term, 1942, Pet. 10).

by the Court as to contempt in the case of perjury. We wish merely to emphasize that the Court did not hold that perjury may never be contempt; that the nub of its decision was that "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is * * * the characteristic upon which the power to punish for contempt must rest" (249 U. S. at p. 383); and that hence an obstruction to the performance of judicial duty is punishable as contempt even though perjury is the means employed to effect that end. See *Clark* v. *United States,* 289 U. S. 1, 12; *United States* v. *McGovern,* 60 F. 2d 880, 889 (C. C. A. 2), certiorari denied, 287 U. S. 650.

This principle was recognized both before and after the *Hudgings* decision. The following acts have all been treated as contempts of court: the institution of a collusive action, i. e., the false allegation of the existence of a controversy (*Lord* v. *Veazie,* 8 How. 250, 255; *Cleveland* v. *Chamberlain,* 1 Black 419, 426); concealment of bias by a talesman with the result that she was selected as a juror (*Clark* v. *United States,* 289 U. S. 1, 12); a false statement by a disbarred attorney that he was a member in good standing of the bar of another jurisdiction with the result that he was admitted to practice *pro hac vice* (*Bowles* v. *United States,* 44 F. 2d 115, 118, 50 F. 2d 848, 851 (C. C. A. 4), certiorari denied, 284 U. S. 648); the offer-

ing of a false lease in evidence (*United States* v. *Karns,* 27 F. 2d 453 (N. D. Okla.); false testimony that subpoenaed records had been destroyed when in fact they were still in existence (*United States* v. *Brown,* 116 F. 2d 455 (C. C. A. 7); *United States* v. *Dachis,* 36 F. 2d 601 (S. D. N. Y.). In all these cases false swearing was involved, but the effect of the false swearing was not limited to conveying to the court false information about the particular fact sworn to; it went further and deflected or was intended to deflect the entire course of the judicial proceeding. For that reason the false swearing was held to be a contempt of court.

On the same principle a number of decisions have held that witnesses were properly punished for contempt, not so much because their testimony was false, but because their false testimony represented an obstruction of the judicial process. *In re Meckley,* 137 F. 2d 310 (C. C. A. 3), certiorari denied, 320 U. S. 760; *In re Presentment by Grand Jury of Ellison,* 44 F. Supp. 375 (D. Del.), affirmed, 133 F. 2d 903 (C. C. A. 3), certiorari denied, 318 U. S. 791; *Schleier* v. *United States,* 72 F. 2d 414 (C. C. A. 2), certiorari denied, 293 U. S. 607; *United States* v. *McGovern,* 60 F. 2d 880 (C. C. A. 2), certiorari denied, 287 U. S. 650; *Lang* v. *United States,* 55 F. 2d 922 (C. C. A. 2), certiorari dismissed, 286 U. S. 523; *O'Connell* v. *United States,* 40 F. 2d 201 (C. C. A. 2), certiorari dismissed, 296 U. S. 667; *Loubriel* v. *United States,*

9 F. 2d 807 (C. C. A. 2); *Haimsohn* v. *United States*, 2 F. 2d 441 (C. C. A. 6); *In re Kaplan Bros.*, 213 Fed. 753 (C. C. A. 3), certiorari denied, 234 U. S. 765; *In re Schulman*, 177 Fed. 191 (C. C. A. 2); *In re Rosenblum*, 268 Fed. 381 (W. D. Mo.); *United States* v. *Appel*, 211 Fed. 495 (S. D. N. Y.); *In re Shear*, 188 Fed. 677 (W. D. N. Y.); *In re Gitkin*, 164 Fed. 71 (E. D. Pa.); *Ex parte Bick*, 155 Fed. 908 (C. C. S. D. N. Y.). In most of these cases, the falsity of the testimony was readily apparent and consisted of flippant or obviously evasive answers, such as inability to recollect facts which the witness must have known. On the basis of this circumstance, petitioner argues (Supplemental Brief, p. 6) that false testimony cannot constitute contempt unless the falsity is so manifest that it can be determined by a mere inspection of the witness' testimony. However, the concealment of the talesman's bias in the *Clark* case, the collusive nature of the complaint in the *Lord* case, the disbarment of Bowles, the falsity of the lease in the *Karns* case, the existence of the records in the *Brown* and *Dachis* cases, all had to be proved by independent testimony; in none of these cases did the falsity of the statements treated as contempt appear on their face. The contempt lay in the fact that in each instance the false statements tended to obstruct the course of the judicial proceeding which was to follow.

Taking into consideration all the circumstances of this case, including the fact that petitioner was testifying before a grand jury seeking information, we submit that the courts below properly held that petitioner's conduct had the obstructive element necessary to constitute contempt. There can be no doubt on this record that petitioner's vague explanation of the $2,200 withdrawn by means of the five checks cashed on April 17, and his denial of the receipt of the greater part of the $5,200 extracted from the assets of Central by means of these checks and the $3,000 check from Maxi to Fenner, were deliberately false, evasive, and misleading, for the evidence conclusively establishes that petitioner contrived the scheme to extract money by such means, and that he received the greater part of the money so withdrawn. Considered in relation to the scope of the grand jury's inquiry, it is evident that such false and misleading testimony was deliberately designed to and actually did block the grand jury in the performance of its functions.

The grand jury was investigating frauds against the United States, and the tenor of the questions addressed to petitioner indicates that it was directing its inquiry to the entire system of bankruptcy administration in the district. Petitioner was questioned as to his acquaintance with Donald Johnson, the son of the judge who appointed him, and Donald Johnson's part in securing petitioner's appointment as trustee (R. 25–26,

28–29, 50). He was asked whether the appointment of Reifsnyder, whose services he had never before utilized, was suggested by Donald Johnson (R. 30–31, 50–51). The grand jury was obviously concerned, not merely with tracing funds of the bankrupt's estate into petitioner's hands, but with discovering the ultimate disposition of such funds. It is clear from petitioner's testimony as a whole that, in denying the receipt of the money extracted from Central, petitioner was attempting, not merely to save himself, but to shield others. The evidence establishes that at least part of the money wrongfully taken from the assets of Central was withdrawn for the express purpose of "spreading a little oil." By denying that he had received the money and intimating that Davis and Long had withdrawn some of it for their own purposes, petitioner sought to, and did prevent, inquiry into the manner in which he "spread the oil." If petitioner had kept a record of his receipt and expenditure of the funds and had deliberately destroyed or concealed such record in the grand jury room, or if he had admitted receiving the money and had expressed inability to recall his expenditure thereof, he would, under the authorities cited above, pages 13–14, clearly have been guilty of contempt. His false and misleading account of the circumstances under which the five checks cashed on April 17 were drawn, and his false denial of the receipt of any part of the money taken from Central, were

designed to be, and were, as effective a barrier to the grand jury's investigation. Petitioner's conduct was thus obstructive of the grand jury's functions and, under the principles enunciated by this Court, a contempt of court.[5]

II

PETITIONER'S TESTIMONY BEFORE THE GRAND JURY WAS CONTUMACIOUSLY EVASIVE AND HENCE PROPERLY PUNISHED AS CONTEMPT

Although the cases dealing with punishment of witnesses for contempt, cited at page 14, *supra*, speak for the most part in terms of obstruction of justice, the facts in such cases reveal that the

[5] We think that petitioner's conduct could properly have been punished as contempt even if the grand jury had been able to obtain all relevant information from other sources. Petitioner's testimony in respect of the whole scheme—the $3,000 check given to Fenner, the payment to Hervey Smith, and the cash withdrawn by the five checks cashed on April 17—was designed to keep from the grand jury important and relevant information directly material to its inquiry. Petitioner thus intended to block the inquiry, whether or not he succeeded in doing so. That, we submit, would in itself be sufficient to justify his conviction for contempt. See *United States* v. *Brown*, 116 F. 2d 455, 457 (C. C. A. 7); *Lang* v. *United States*, 55 F. 2d 922, 923 (C. C. A. 2), certiorari dismissed, 286 U. S. 523. To obstruct means to render more difficult, not necessarily to prevent entirely. Cf. *Masses Pub. Co.* v. *Patten*, 246 Fed. 24 (C. C. A. 2); *O'Hare* v. *United States*, 253 Fed. 538, 540 (C. C. A. 8), certiorari denied, 249 U. S. 598, interpreting the term "obstruct" as used in the Espionage Act of 1917 (50 U. S. C. 33). As Justice Holmes pointed out in his celebrated dissent in *Abrams* v. *United States*, 250 U. S. 616, 628, a specific intent to bring about a result may itself contribute an element of obstructiveness to acts which would otherwise lack the requisite element.

witnesses were punished for deliberately trying to conceal facts which they must have known, and that their answers were not merely false but evasive. This kind of answer is, in itself, a flouting of the authority of the court, analogous to a refusal to answer, and summary punishment of such conduct can be sustained on the ground that it is contumacious, even if perjury alone is not so punishable.

The circuit court of appeals apparently thought that petitioner's testimony was not of this nature, for both the majority and dissenting opinions state that petitioner's answers were not on their face contumacious, obstreperous, or unresponsive (R. 131, 139). However, the district court found that petitioner's testimony before the grand jury was "false and evasive" (R. 92–93), and the record of petitioner's testimony, particularly in respect of the five checks cashed on April 17, amply supports such finding. Petitioner was a trustee, under a duty to account to the court for his transactions. Yet, when confronted by five checks signed by him as trustee, the existence of which he could not deny, his first explanation was that he signed so many checks he could not remember what they were for, despite the facts that the checks to Davis and Long were far in excess of their salaries, and that the checks to cash totaled $1,000 (R. 56–57, 59–60, 64–65). His next explanation was that, although he was still acting

as trustee at the time of the transactions in question and was then in the process of filing an account of the assets of the company with the court, he did not really perform his functions as such, but considered Maxi the beneficial owner of the business (R. 57–58). Finally, he testified that the $600 checks to Davis and Long might have represented bonuses which they undertook to award to themselves without his permission (R. 84–85). On its face, this testimony by a trustee giving an account of his trust is so patently an attempt to conceal knowledge which he must have had, that it could properly be considered contumacious. When judged in relation to the established fact that petitioner deliberately planned the scheme for the withdrawal of the money by means of the five checks, and therefore must have known the circumstances under which the checks were drawn, it is clear that his entire testimony in this regard was a series of evasive answers designed to mislead the grand jury and conceal facts which petitioner must have known. This was not mere perjury, but a trifling with the court, properly punishable as contempt. Cf. *Schleier* v. *United States*, 72 F. 2d 414 (C. C. A. 2), certiorari denied, 293 U. S. 607; *Lang* v. *United States*, 55 F. 2d 922, certiorari dismissed, 286 U. S. 523; *Loubriel* v. *United States*, 9 F. 2d 807 (C. C. A. 2).

III

SINCE PETITIONER, AT THE TIME HE TESTIFIED BEFORE THE GRAND JURY, WAS STILL ACTING AS TRUSTEE, HIS FALSE TESTIMONY IN RESPECT OF HIS TRANSACTIONS AS TRUSTEE CONSTITUTED MISBEHAVIOR BY AN OFFICER OF THE COURT WITHIN THE PURVIEW OF THE CONTEMPT STATUTE

At the time petitioner testified before the grand jury he was still a trustee of the Central Forging Company (R. 56), and thus an officer of the district court. *Callaghan* v. *Reconstruction Finance Corp.*, 297 U. S. 464, 468; *Realty Associates Securities Corp.* v. *O'Connor*, 295 U. S. 295, 299. He was testifying before an arm of that same court in respect of the very matter in which he was acting as trustee. His deliberate falsification of relevant facts concerning his trusteeship thus falls within that part of Section 268 of the Judicial Code which authorizes punishment as contempt of "the misbehavior of any of the officers of said courts in their official transactions."

This Court has recognized that officers of the court are under a greater duty than are ordinary persons to make full disclosure to the court of all relevant information. *Crites Inc.* v. *Prudential Co.*, 322 U. S. 408, 414. In *Clark* v. *United States*, 289 U. S. 1, 12, the Court stated: "deceit by an attorney may be punished as a contempt if the deceit is an abuse of the functions of his

office * * *, and that apart from its punishable quality if it had been the act of someone else." It ruled in that case that a talesman, sworn as a juror, must be held to the standards applicable to an officer of the court. Certainly a trustee, appointed by the district court, is subject to the same high standard of accountability. There can be no doubt that, if petitioner had been called before the bankruptcy court and had testified there as he did before the grand jury, he would have been guilty of official misconduct punishable as contempt. Cf. *Daily* v. *Superior Court,* 4 Calif. App. 2d 127 (1935); *Goodhart* v. *State,* 84 Conn. 60 (1911); *In re Toepel,* 139 Mich. 85 (1905); *In re S.* —, 115 N. J. Equity 186 (1934), in all of which attorneys or other officers of the court were found to be in contempt because they misled the court or failed to disclose relevant information.

The fact that petitioner was testifying before the grand jury rather than the bankruptcy court does not, we think, serve to render his acts any the less official misconduct. So long as he was a trustee, he was an officer of the court accountable to the court for his official transactions. Just as in the *Crites* case, *supra,* this Court ruled that the duty of a receiver in foreclosure was "not to be measured solely by the arbitrary dichotomy of functions relating to the conservation and liquidation of the farm properties", so in this case petitioner's obligation to make full disclosure

in respect of his official transactions cannot be limited to one particular branch of the district court. He was "bound to act fairly and openly with respect to every aspect of the proceedings before the court". 322 U. S. at p. 414. The inquiry by the grand jury in this case was not as to petitioner's actions as a private citizen, nor as to matters which he may incidentally have learned as trustee. The grand jury was investigating the particular reorganization proceeding in which petitioner was still the trustee, i. e., an officer of the district court. His obligation to give truthful testimony was therefore not merely that of an ordinary witness but that of an officer of the court, and his deliberate falsification of his account of his trusteeship was not only a breach of his duty as a witness, but an abuse of his official functions as well.

Petitioner's then existing status as trustee was not emphasized in the proceeding in the district court, was not made the basis of the district court's decision, and was not considered by the circuit court of appeals in reviewing his conviction. Nevertheless, petitioner would not be prejudiced by an affirmance on such ground. The fact that the grand jury was investigating the reorganization proceedings in which petitioner was still acting as trustee is not in dispute. Whether petitioner's conduct be judged in relation to his duty as a witness or as trustee, the only material issue which was contested was whether petitioner will-

fully concealed relevant information in respect of his conduct as trustee, an issue resolved against him by the judgment of the district court. The holding of that court that petitioner as a witness deliberately obstructed the administration of justice by willfully false and evasive testimony necessarily includes the finding that petitioner as trustee committed an act of official misconduct by withholding relevant information and misleading the court as to his transactions as trustee.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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In the Matter of Robert D. Michael, Petitioner. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 5, 1945.]

Mr. Justice Black delivered the opinion of the Court.

A Federal District Court, after a hearing, adjudged that the petitioner was guilty of contempt on findings that he had given "false and evasive" testimony before a Grand Jury which "obstructed the said Grand Jury in its inquiry and the due administration of justice." A sentence of six months imprisonment was imposed. The Circuit Court of Appeals reviewed the evidence, found that the petitioner had not been "contumacious or obstreperous", had not refused to answer questions, and that his testimony could not be "fairly characterized as unresponsive in failing to give direct answers to the questions asked him." But it accepted the District Court's finding that the petitioner's testimony as to relevant facts was false, and concluded that it was of a type tending to block the inquiry and consequently "an obstruction of the administration of justice" within the meaning of Sec. 268 of the Judicial Code[1] so as to subject petitioner to the District Court's power to punish for contempt. 146 F. 2d 627. We granted certiorari to review this question, in view of the close similarity of the issues here to those decided in *Ex Parte Hudgings*, 249 U. S. 378, a case in which the District Court was held to have exceeded its contempt power.

A brief summary of circumstances leading to the petitioner's conviction will help to focus the issues. The Grand Jury undertook a general investigation of frauds against the United States which led to an inquiry concerning administration of the reor-

[1] Section 268 provides in part that the "power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, . . . and the disobedience or resistance by any . . . witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts."

ganization of the Central Forging Company under Sec. 77 (b) of the Bankruptcy Act. The petitioner, by appointment of a district judge, had been serving as that company's trustee. While before the Grand Jury he was repeatedly interrogated concerning payments of various amounts made from the bankrupt's assets. He was asked to explain the purposes for which numerous checks had been drawn. After weeks of inquiry in which he and others were interrogated about these matters, the Court, on petition of the prosecution before the Grand Jury, issued a rule to petitioner to show cause why an order should not be made adjudging him in contempt of court for obstructing the investigation. Upon trial by the Court the transcript of petitioner's Grand Jury testimony was offered in evidence. The Court then heard other witnesses on behalf of the prosecution who testified to facts which directly conflicted with the petitioner's explanations before the Grand Jury. The District Court, disbelieving petitioner and believing the other witnesses, made its finding that petitioner's Grand Jury testimony had been false. No witness was offered to indicate that the petitioner in the Grand Jury room had been guilty of misconduct of any kind other than false swearing. And a reading of the evidence persuades us that the Circuit Court of Appeals correctly found that he had directly responded with unequivocal answers.[2] These unequivocal answers were clear enough so that if they are shown to be false petitioner would clearly be guilty of perjury. But he could have been indicted for that offense, in which event a jury would have been the proper tribunal to say whether he or other witnesses told the truth. Our question is whether it was proper for the District Court to make its finding on that issue the crucial element in determining its power to try and convict petitioner for contempt.

Not very long ago we had occasion to point out that the Act of 1831, 4 Stat. 487, from which Sec. 268 of the Judicial Code derives, represented a deliberate Congressional purpose drastically to curtail the range of conduct which Courts could punish as

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[2] It is true that when petitioner was first asked whether he drew certain checks on specified dates he answered that he could not be sure in view of the number of checks he drew. When the particular checks were more specifically pointed out petitioner did offer explanations, which though they might have been false, nevertheless constituted clearcut answers.

[3] See also as to this historical purpose, Nyles and King, Contempt by Publication in the United States, 28 Col. L. Rev. 401 *et seq.*; 525 *et seq.*; Fox, The History of Contempt of Court, (1927).

contempt. *Nye* v. *United States*, 313 U. S. 33, 44-48.[3] True, the Act of 1831 carries upon its face the purpose to leave the courts ample power to protect the administration of justice against immediate interruption of its business. But the references to that Act's history in the *Nye* case, *supra*, reveal a Congressional intent to safeguard constitutional procedures by limiting courts, as Congress is limited in contempt cases, to "the least possible power adequate to the end proposed." *Anderson* v. *Dunn*, 6 Wheat. 204, 231. The exercise by federal courts of any broader contempt power than this would permit too great inroads on the procedural safeguards of the Bill of Rights, since contempts are summary in their nature, and leave determination of guilt to a judge rather than a jury. It is in this Constitutional setting that we must resolve the issues here raised.

All perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. "Therefore it cannot be denied that it tends to defeat the sole ultimate objective of a trial." It need not necessarily, however, obstruct or halt the judicial process. For the function of trial is to sift the truth from a mass of contradictory evidence, and to do so the fact finding tribunal must hear both truthful and false witnesses. It is in this sense, doubtless, that this Court spoke when it decided that perjury alone does not constitute an "obstruction" which justifies exertion of the contempt power and that there "must be added to the essential elements of perjury under the general law the further element of obstruction to the Court in the performance of its duty." *Ex parte Hudgings*, *supra*, 382, 383, 384. And the Court added "the presence of that element [obstruction] must be clearly shown in every case where the power to punish for contempt is exerted."

Clark v. *United States*, 289 U. S. 1, is a case in which the Court found that element "clearly shown." In that case, the Court found that a prospective juror had testified falsely in order to qualify despite the fact that she was a partisan who would vote for a verdict of not guilty regardless of evidence of guilt. It is difficult to conceive of a more effective obstruction to the judicial process than a juror who has prejudged the case. For this prevents the very formation of a proper judicial tribunal. As the Court said in the *Clark* case, "The doom of mere sterility was on the trial from the beginning." p. 11. Perjury was not even the basis of the conviction. The Court's opinion makes it clear that

the obstruction would have been the same had the partisan plan to thwart justice been carried out without any swearing at all. Of course the mere fact that false swearing is an incident to the obstruction charged does not immunize the culprit from contempt proceedings. Certainly that position offers no support for the present conviction.

Here there was, at best, no element except perjury "clearly shown." Nor need we consider cases like *United States* v. *Appel*, 211 F. 495, 496, pressed upon us by the government. For there the Court thought that the testimony of Appel was "on its mere face, and without inquiring collaterally . . . not a bona fide effort to answer the questions at all." In the instant case there was collateral inquiry; the testimony of other witnesses was invoked to convince the trial judge that petitioner was a perjurer. Only after determining from their testimony that petitioner had wilfully sworn falsely, did the Court conclude that petitioner "was blocking the inquiry just as effectively by giving a false answer as refusing to give any at all." This was the equivalent of saying that for perjury alone a witness may be punished for contempt. Sec. 268 is not an attempt to grant such power.

Nor can the conviction be upheld under that part of Sec. 268 which authorizes punishment for contempts which consist of "the misbehavior of any of the officers of said courts in their official transactions." While the petitioner was a trustee, and we may assume an officer of the Court within the statutory meaning, he was not engaged in an "official transaction" as trustee when he testified before the Grand Jury in the course of a general inquiry. Whether he could be punished for contempt for giving perjured testimony in the course of proceedings directly involving administration of the estate is another matter not now before us.

The judgments of the Circuit Court of Appeals and the District Court are

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.